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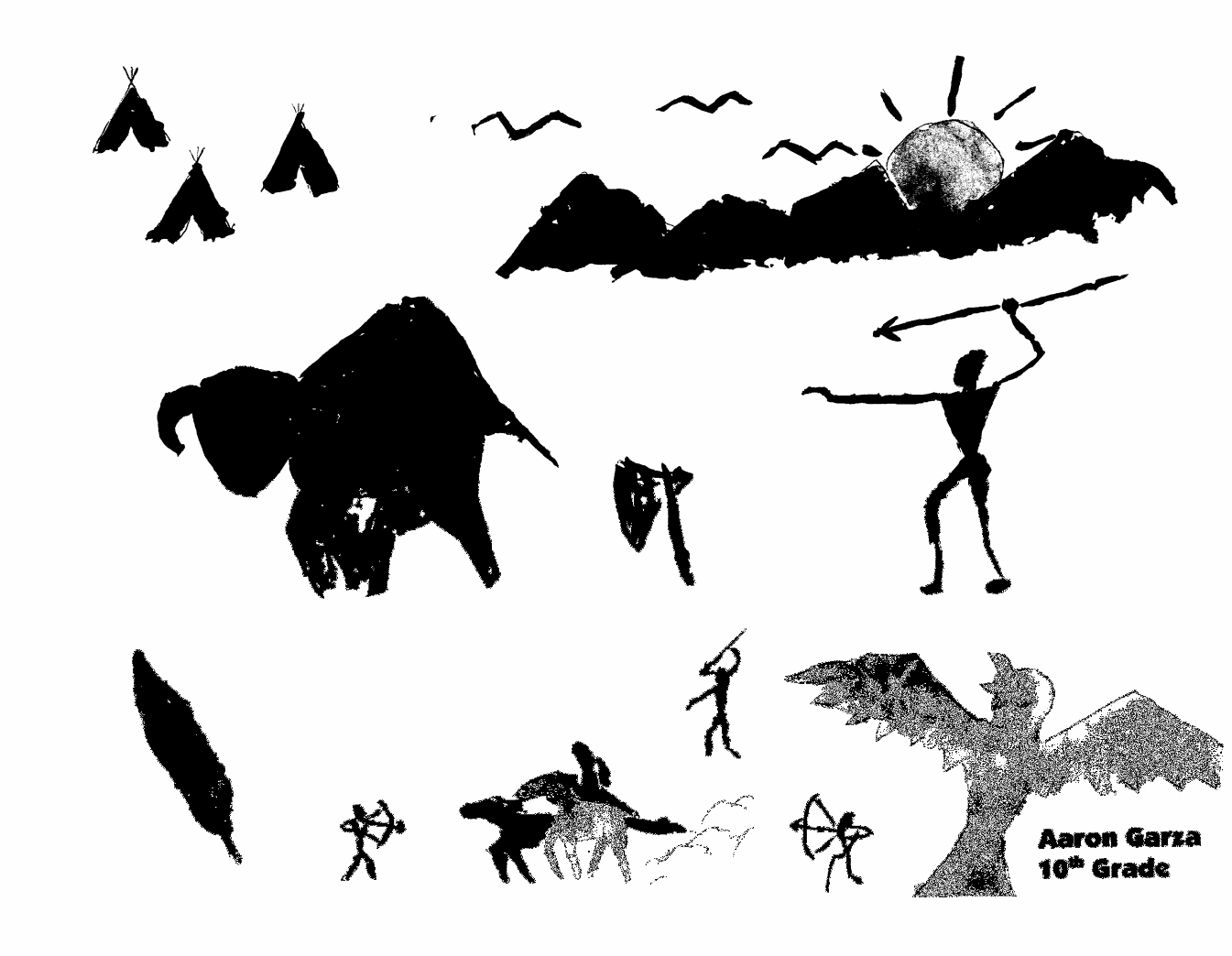

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Belinda Bostick
Kris Hogan
Roberta Knight
Jill S. Ledbetter
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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 111. SECURITIES EXEMPT FROM REGISTRATION

7 TAC §111.2

The Texas State Securities Board proposes an amendment to §111.2, concerning listed and designated securities. The amendment to subsection (a) would remove the reference to the Midwest Stock Exchange, as it is no longer needed since the Texas Securities Act has been updated to reflect the current name of the exchange as the Chicago Stock Exchange. New subsection (f) is being added to include a definition of "national market system of the NASDAQ stock market."

Micheal Northcutt, Director, Registration Division, has determined that, for the first five-year period the rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the rule will be updated to reflect recent changes by the NASDAQ stock market. There will be no effect on micro or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-6.

Statutes and codes affected: Texas Civil Statutes, Articles 581-5, 581-6, and 581-7.

§111.2. Listed and Designated Securities.

(a) Fully listed. As used in the Texas Securities Act, §6.F, "fully listed" includes any security listed or approved for listing upon notice of issuance on an exchange specified in the Act, §6.F, or on an exchange listed in subsection (b) of this section. [~~The Midwest Stock Exchange, referenced in the Act, § 6.F, has been renamed the Chicago Stock Exchange; thus, securities which at the time of sale have been fully listed upon the Chicago Stock Exchange fall within the exemption provided in the Act, §6.F.~~]

(b) - (e) (No change.)

(f) National market system of the NASDAQ stock market. The "national market system of the NASDAQ stock market," as used in the Act, §6.F, includes NASDAQ Global Select Market, NASDAQ Global Market, and NASDAQ Capital Market.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605458
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 305-8310

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, ("TAC"), §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.53, 68.65, 68.70, 68.75, 68.76, 68.80, 68.90, and 68.100 - 68.103; new §§68.54, 68.55, 68.60, 68.73, 68.74, and 68.104; and the repeal of §68.54 and §68.74 regarding the elimination of architectural barriers.

These proposed rule changes are a result of the Department's review of administrative rules at 16 TAC, Chapter 68, Elimination of Architectural Barriers, pursuant to Texas Government Code, §2001.039. Based on public comments and staff recommendations, the Department's review determined that the reasons for initially adopting the rules continue to exist but that changes to the rules should be proposed through the rulemaking process. The Commission of Licensing and Regulation ("Commission") adopted the rule review effective July 1, 2005, readopting the rules in Chapter 68 without changes but with the intent that rule

changes would be proposed based on the public comments and the Department's review.

On July 18, 2006, the Architectural Barriers Advisory Committee ("Committee") considered and approved a draft of the proposed rules, with direction to Department staff to consider certain concerns of individual Committee members and to revise the draft as appropriate. In publishing these proposed rules, the Department has made certain changes based on the Committee's concerns.

These proposed rules are necessary to update statutory references and bring rule requirements more in line with state and federal law. In addition, rule changes are needed to reorganize certain provisions for greater clarity and readability and to delete unnecessary provisions. A new continuing education rule is added to require registered accessibility specialists to complete eight hours of continuing education as a prerequisite to renewing a certificate of registration.

Specific Changes

Section 68.1 is amended to make a technical correction to the reference to Texas Government Code, Chapter 469.

Section 68.10 is amended to update definitions of key terms. A technical correction is made to the definition of "Act." Obsolete definitions of "business days" and "commissioner" are deleted. The definition of "common use" is moved to maintain alphabetical order. The definition of "completion of construction" is clarified by specifying a date for completion. In addition, based on a rule review comment from the Texas Department of Transportation, language is added to address the meaning of "completion of construction" for public roadway projects. "Construction documents," "employee work area," "public right-of-way," and "variance application" are updated to clarify the meanings of those terms. "Registered accessibility specialist" is updated to correspond to changes in §68.70 that eliminate separate registration requirements for inspection and review functions. Minor technical changes are made to other definitions.

Section 68.20 is amended to add a reference to proposed new §68.54 (concerning review and inspection of buildings and facilities with an estimated construction cost of less than $50,000 or not subject to the Act) and to delete some redundant words.

Section 68.30 is amended to update the list of exemptions. Exemption (8) for places used primarily for religious rituals is updated with the term common "use" areas. Exemption (9) for specific employee work areas is modified to specify that dumpster pads/enclosures are exempted only if accessed exclusively by employees, and the maximum dimensions of the area are increased. The substance of exemption (10), relating to elements, spaces, and accessible routes at fire stations, is moved to proposed new §68.104 because this provision is not strictly an exemption and is more appropriate as a stand-alone section. The residential facilities exemption, now exemption (11), is reworded to better reflect the scope of Texas Government Code, Chapter 469 with regard to residential facilities.

Section 68.31 is amended to clarify the procedure and terminology for variance applications. New subsection (c) places a maximum time limit of 270 calendar days after the date of the inspection report for submitting requests to waive or modify a standard. After 270 days, the Department will address remaining deficiencies as an enforcement issue. The rule clarifies that supporting documents not previously reviewed may be submitted at various stages of the variance appeal process. Subsection (f) is amended to add that the person making the submission, in addition to the owner, will be notified of the determination. New subsection (g) clarifies the basis on which determinations shall be made.

Section 68.50(a) is amended to specify that construction documents must be submitted along with a Proof of Submission form and to clarify the timeframe for doing so. Subsection (b), concerning instances in which there is not a design professional with overall responsibility, is amended to specify the manner of submitting construction documents. Subsection (c) is amended to add that project registration may be accomplished electronically, online by means of an Architectural Barriers Project Registration Confirmation Page. This must be done when the design professional or owner submits the construction documents. Subsections (d), (e), and (f) are deleted as unnecessary details.

Section 68.51(a) is amended to add that both the owner and the person making the submission will be advised in writing of the plan review findings. To simplify the review process, language concerning conditional approval is deleted. Under this simplified review process, either the construction documents will be approved, or the plan review findings will note deficiencies. Subsection (c) is amended to clarify the process for submitting design revisions and to add that both the owner and the person making the resubmittal will be advised of the findings.

Section 68.52(a) is amended to require the owner to obtain an inspection not later than the first anniversary of the completion of construction, as required by statute. Request for inspection must be made by submitting a Request for Inspection form not later than 30 calendar days after completion of construction, and, if the form is submitted to the Department, the form must be accompanied by the inspection fee. Subsection (b) is deleted as unnecessary. The new subsection (b) specifies that the Department, a registered accessibility specialist, or a contract provider, as appropriate, shall receive the Request for Inspection form prior to proceeding with the inspection. This change is necessary to ensure that an inspection actually has been requested.

Section 68.53 is amended to make minor grammatical changes.

Section 68.54 is repealed to allow for the placement of a new §68.54, concerning reviews and inspections that are not required by the Act. The Department does receive requests for such reviews and inspections, and the new section is necessary to establish the procedure for making requests. The substance of current §68.54 is moved to new §68.60, with language added that the Department shall provide a Notice of Substantial Compliance to the owner at the owner's request through submission of the appropriate Department form.

New §68.55 is added to prescribe the procedure for requesting a preliminary plan review.

Section 68.65 is amended to delete unnecessary wording.

Section 68.70 is amended to eliminate separate eligibility requirements for registration to perform plan reviews and registration to perform inspections. There would be only one type of registration as a registered accessibility specialist, and the registration would allow the registrant to perform both plan review and inspection services. Subsection (a) contains the eligibility requirements to become a registered accessibility specialist and perform either plan review or inspection services. These requirements are essentially the same as the current eligibility requirements to perform plan review services, with the addition of inspection experience. These requirements are greater than the current requirements for providing only inspection services. The

reason for this change is that, in the Department's view, inspections require as much knowledge, education, and experience as do plan reviews. Language is added to clarify the application process. New subsection (b) includes a stipulation that if all requirements are not met within one year, a new application shall be submitted. Current subsection (c), which describes the various endorsement codes for different kinds of services, is deleted as no longer necessary. The new eligibility requirements will apply to those seeking registration on or after the effective date of the rule changes. A registered accessibility specialist who was registered under the current rules may continue to renew his or her registration after the effective date of the changes, without meeting the new requirements.

Section 68.74 is repealed so that the rule can be renumbered as §68.73. New subsection (d) clarifies that registered accessibility specialists may not perform work requiring registration without satisfying continuing education requirements prior to renewal.

New §68.74 establishes continuing education requirements for registered accessibility specialists. Under Texas Occupations Code, §51.405 the Commission is required to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. Proposed §68.74 implements that statutory provision for registered accessibility specialists. The Department's general requirements for continuing education providers and courses, which are contained in 16 TAC, Chapter 59, apply to providers and courses for registered accessibility specialists. The proposed new §68.74 establishes specific requirements for registrants, providers, and courses. The new rule requires a registrant to complete eight hours of continuing education in Department-approved courses to renew a certificate of registration. The continuing education hours must include four hours of instruction in one or more of four specified topics. The remaining four hours may be in any of the topics specified in subsection (f). The continuing education hours must be completed during the term of the current registration or, in the case of a late renewal, within the one-year period prior to the date of renewal. A registrant may not receive credit for attending the same course more than once. A registrant is required to retain a copy of the certificate of completion for one year after the date of completion of the course. To be approved by the Department, a provider's course must be dedicated to instruction in one or more of the topics specified in subsection (f). The rule applies to providers and courses upon the effective date of the new section. The rule applies to registrations that expire on or after September 1, 2007.

Section 68.75 is amended to make minor technical changes to subsections (b) and (c). Current subsection (d) is deleted because the Department views the requirement to verify ownership of the building or facility as an unnecessary burden on registered accessibility specialists. New subsection (d) is necessary to prescribe the manner and timing of submitting updated contact information to the Department.

Section 68.76(a) is amended to require that registered accessibility specialists follow all Department procedures, not just those procedures that relate specifically to plan reviews and inspections. The amendment to subsection (e)(9) recognizes that there is a conflict of interest for a registered accessibility specialist who participated in creating the overall design of the project, whether or not that participation was for compensation. New subsection (e)(10) is added to prohibit a registered accessibility specialist from using the Texas State seal without obtaining the appropriate license. This provision is necessary to prevent a registered accessibility specialist from giving a misleading impression that he or she is an agency of the state. Similarly, new subsection (e) prohibits a registered accessibility specialist from representing himself or herself as an employee of the Department or as a person hired by the Department.

Section 68.80 is amended to reorganize provisions relating to Department fees for greater clarity and readability. Unnecessary language concerning review of multiple facilities is deleted from subsection (a). Language concerning the process for plan review, project filing, and inspection is deleted because these matters are adequately addressed elsewhere in the rules. The fee schedule is reorganized. Fees are eliminated for registered accessibility specialists with single endorsements for plan review or inspection services. The application and renewal fees for all registered accessibility specialists will be the same as the current fees for registered accessibility specialists with the dual endorsement. Subsection (b), formerly subsection (c), is reorganized, and language is added to clarify that the project filing fee is the only Department fee that is required for projects submitted to a registered accessibility specialist. New subsection (c) is added to clarify the fees for a project that is not subject to the Act but is registered with the Department. New subsection (d) clarifies when the preliminary review fee must be paid. Subsection (e) is amended to specify when the late project filing fee must be paid. The provision in new subsection (g) is relocated from former subsection (d) with minor wording changes.

Nonsubstantive, technical changes are made to §68.90.

Surplus wording is removed from §68.100(b).

In §68.101 the phrase "constructed, renovated, or modified" is used to conform to statutory terminology. Language is added that project registration may be accomplished online by means of an Architectural Barriers Project Registration Confirmation Page.

Section 68.102(a) is amended to specify that only those pedestrian elements being constructed, renovated, modified, or altered need to be included in the construction documents submitted for review. In subsection (b)(2)(A), a more specific reference to the Texas Accessibility Standards (TAS) related to detectable warnings is included, language concerning textures is removed to conform to the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG), and language is added to specify in more detail where detectable warnings are required. Similarly, in subsection (b)(2)(B) and (C), the more specific TAS reference relating to detectable warnings is included, and language concerning textures is deleted. In subsection (b)(2)(C) the language is added to specify in more detail where detectable warnings are required, and the maximum distance from the curb line is lowered.

Section 68.103 is amended to update the citation to the version of the ADAAG proposed in the Federal Register.

Finally, new §68.104, relating to elements, spaces and accessible routes at fire stations, contains a provision that is moved from §68.30.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeals, amendments, and new rules are in effect there will be no significant costs to the state. There may be some increased workload for Department staff in reviewing continuing education courses and approving providers. However, any increase in costs to the Department is not expected to be significant, and additional revenue from

fees established in 16 TAC Chapter 59 for provider registration and course approval should be sufficient to offset any additional costs. Any change in revenue from eliminating fees for single endorsement registered accessibility specialists will be insignificant. There will be no cost or change in revenue to local government as a result of enforcing or administering the proposed repeals, amendments, and new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal, amendments, and new rules are in effect, the public benefits will be the following. Rule requirements will be clearer and better organized. The rules will specifically provide for electronic, online project registration, which will be a more efficient process for registering projects. All new registered accessibility specialists will be required to meet the higher standards for experience and education that are currently required only for registrants who perform plan reviews. This will benefit the public by ensuring that accessibility inspections are performed by highly qualified individuals. Additionally, continuing education requirements will help to ensure that plan reviews and inspections are performed by knowledgeable and competent individuals.

There will be some economic costs to certain persons who are required to comply with the rule changes, including small or micro-businesses. Fees for continuing education providers, which could include small or micro-businesses, will be those stated in 16 TAC Chapter 59. The provider application fee will be $250; the annual renewal fee for a provider will be $250; and the approval fee for each course will be $100 annually. Registered accessibility specialists likely will be required to pay a provider for taking a continuing education course. The Department does not regulate the amount that a provider may charge for continuing education, so the Department is unable to determine the cost to the individual registrant. The Department anticipates that the cost to providers and registrants will not be unduly high relative to the benefits to the public and registrants of enforcing standards for continuing education. With the elimination of single and dual endorsements, the fees for a single endorsement are eliminated. The elimination of the single endorsement renewal fee will result in an increased cost of $100 per renewal for those registrants who currently have a single endorsement. However, only a very small number of registrants will be affected by the change.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.55, 68.60, 68.65, 68.70, 68.73 - 68.76, 68.80, 68.90, 68.100 - 68.104

The amendments and new rules are proposed under Texas Government Code, Chapter 469, which directs the Commission to adopt standards, specifications, and other rules under that chapter, and under Texas Occupations Code, Chapters 51, which authorizes the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department. In particular, Texas Occupations Code, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposal.

§68.1. Authority.

These rules are promulgated under the authority of [~~the Elimination of Architectural Barriers Act,~~] Texas Government Code, Chapter 469, Elimination of Architectural Barriers, and Texas Occupations Code, Chapter 51.

§68.10. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--[~~The Elimination of Architectural Barriers Act,~~] Texas Government Code, Chapter 469, Elimination of Architectural Barriers (the Texas Architectural Barriers Act).

(2) Building--Any structure located in the State of Texas that is used and intended for supporting or sheltering any use or occupancy.

[~~(3) Business days--Calendar days, not including Saturdays, Sundays, and legal holidays.~~]

(3) [~~(4)~~] Commencement of Construction--The date of placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.

[~~(5) Commissioner--As used in Chapter 469 and in this chapter, has the same meaning as Executive Director.~~]

(4) Common Use--Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

(5) [~~(6)~~] Completion of Construction--The date when [~~That phase of~~] a construction project [~~which~~] results in occupancy or the issuance of a certificate of occupancy. For public roadway projects, completion of construction occurs upon final payment and release of the contractor performing the work or, if the work is performed by public employees, removal of barricades and opening of all traffic lanes for use.

(6) [~~(7)~~] Construction Documents--Documents used for the construction of a building or facility, including working drawings, plans, specifications, addenda, [~~and applicable~~] change orders , and other supplemental documents issued for the purpose of construction.

(7) [~~(8)~~] Contract Provider--The state agency or political subdivision under contract with the department to perform plan reviews, inspections, or both.

[~~(9) Common Use--Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).~~]

(8) [~~(10)~~] Crosswalk--That part of a roadway where motorists are required to yield to pedestrians crossing, as defined by state and local regulations, whether marked or unmarked.

(9) [~~(11)~~] Curb Line--A line that represents the extension of the face of the curb and marks the transition between the sidewalk and the gutter or roadway at a curb ramp or flush landing.

(10) [~~(12)~~] Designated Agent--An individual designated in writing by the owner to act on the owner's behalf.

(11) [~~(13)~~] Detention and Correctional Facilities--Facilities where occupants are under some degree of restraint or restriction for security reasons including, but not limited to, state prisons, county jails, city jails, detention centers, and substance abuse centers.

(12) [~~(14)~~] Element--An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

(13) [~~(15)~~] Employee Work Area--An area [~~All or any portion of a space~~] designated for employee use only and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are examples of areas that are not employee work areas.

(14) [~~(16)~~] Facility--All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real property subject to the Act.

(15) [~~(17)~~] Issue--To mail, deliver, transmit, or otherwise release plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, applying for a building permit, or obtaining regulatory approval after such plans have been sealed by an architect, interior designer, landscape architect, or engineer. In the case of a state-funded or other public works project, it is the time at which plans or specifications are publicly posted for bids, after such plans or specifications have been sealed by an architect, interior designer, landscape architect, or engineer.

(16) [~~(18)~~] Overall Responsibility--The level of responsibility held by an architect, [~~landscape architect,~~] interior designer, landscape architect or engineer who prepares construction documents and coordinates the various aspects of the design of a building or facility.

(17) [~~(19)~~] Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(18) [~~(20)~~] Pedestrian Access Route--An accessible route for pedestrian use within the public right-of-way.

(19) [~~(21)~~] Pedestrian Elements--Components that make up a pedestrian access route including, but not limited to walking surfaces, ramps, curb ramps, crosswalks, pedestrian overpasses and underpasses, automated pedestrian signals, elevators, and platform lifts.

(20) [~~(22)~~] Public Right-of-Way--The land or property provided for public roadways, [~~usually~~] including the roadway itself and the areas between the roadway and adjacent properties.

(21) [~~(23)~~] Registered Building or Facility--For the purposes of [~~Texas Government Code,~~] §469.102 of the Act, a registered building or facility is a construction project that has been assigned a project registration number by the department.

(22) [~~(24)~~] Registered Accessibility Specialist--An individual who is certified by the department to perform [~~the review functions, inspection functions, or both~~] review and inspection functions of the department.

(23) [~~(25)~~] Religious Organization--An organization that qualifies as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).

(24) [~~(26)~~] Renovation, Modification, or Alteration--Any construction activity, including demolition, involving any part or all of a building or facility. Cosmetic work and normal maintenance do not constitute a renovation, modification, or alteration.

(25) [~~(27)~~] Rules--Title 16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and Regulation promulgated pursuant to the [~~Texas Elimination of Architectural Barriers~~] Act.

(26) [~~(28)~~] Sidewalk--That portion of an exterior circulation path that is improved for use by pedestrians and usually paved.

(27) [~~(29)~~] Space--A definable area, such as a room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

(28) [~~(30)~~] State Agency--A board, commission, department, office, or other agency of state government.

(29) [~~(31)~~] TAS--The Texas Accessibility Standards which were adopted by the Commission December 17, 1993 and became effective April 1, 1994.

(30) [~~(32)~~] Variance Application--The formal documentation filed with the department, by which the owner requests that [~~petitions~~] the department waive or modify accessibility standards [~~to rule on the impracticality of applying one or more of the standards to a building or facility~~].

§68.20. Buildings and Facilities Subject to Compliance with the Texas Accessibility Standards.

(a) - (d) (No change.)

(e) Buildings or facilities of a religious organization are subject to the Act except for areas exempted under §68.30 [~~of this title~~].

(f) Buildings or facilities not subject to the Act may be registered, reviewed, and/or inspected upon request and payment of the applicable fee(s) in accordance with §68.54.

§68.30. Exemptions.

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

(1) - (7) (No change.)

(8) *Places Used Primarily for Religious Rituals.* An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to common use areas. Examples of common areas include, but are not limited to, the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits;

(9) *Specific Employee Work Areas.* Employee work areas, or portions of employee work areas, that are less than 300 [~~150~~] square feet (28m^2) [~~(14m^2)~~] in area and elevated 7 inches (180 mm) [~~(178 mm)~~] or more above the ground or finish floor where the elevation is essential to the function of the spaces; and dumpster pads/enclosures that are accessed exclusively by employees; [~~an extension of a larger employee work area.~~]

[~~(10) *Elements, Spaces, and Accessible Routes at Fire Stations.* At fire stations, common use spaces and elements accessed exclusively by fire-fighting personnel are only required to be adaptable. Additionally, at multi-level fire stations, levels accessed exclusively by fire-fighting personnel are not required to be served by an accessible route. These exemptions do not apply to the public spaces and elements within these facilities which must comply with all applicable technical requirements and be served by an accessible route;~~]

(10) [~~(11)~~] *Van Accessible Parking at Garages Constructed Prior to April 1994.* Parking garages where construction was started

before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility; and

(11) [~~(12)~~] *Residential Facilities.* Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings used exclusively by [~~occupied solely for residential use (i.e. limited to~~] residents and their guests [~~)~~].

§68.31. Variance Procedures.

(a) Requests to waive or modify an accessibility [~~a~~] standard shall be submitted on the Variance Application form [~~prescribed by the department~~]. A separate Variance Application form [~~variance application~~] shall be submitted for each condition within a single building or facility.

(b) Variance Applications [~~applications~~] shall be submitted by the owner [~~or designated agent~~] of the subject building or facility, and shall be accompanied by the applicable fee , plans of all affected areas, and any supporting documentation such as photos, cost analyses, and code references.

(c) Variance Applications may not be submitted more than two hundred seventy (270) calendar days after the date of the inspection report. After two hundred seventy (270) calendar days, remaining deficiencies will be addressed as an enforcement issue as provided by §68.90.

(d) [~~(c)~~] A denial of a Variance Application [~~variance application~~] may be appealed to the Director of Compliance, or his designee, in writing within thirty (30) calendar days from issuance, upon payment of the applicable appeal fee. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(e) [~~(d)~~] A denial of a Variance Appeal [~~variance appeal~~] from the Director of Compliance may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designee, in writing within thirty (30) calendar days of notification of the Director of Compliance's decision. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.

(f) [~~(e)~~] When a Variance [~~variance~~] or Variance Appeal [~~appeal~~] determination has been made, the owner and the person making the submission [~~or designated agent~~] shall be advised in writing of the determination.

(g) Variance and Variance Appeal determinations shall be based on the information and supporting documentation submitted with the application and shall be issued in accordance with §469.151 and §469.152 of the Act.

§68.50. Submission of Construction Documents.

(a) An architect, interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver the construction documents along with a Proof of Submission form to the department, a registered accessibility specialist, or a contract provider not later than the fifth day after the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday or legal holiday is not included [~~five (5) business days after the design professional issues the construction documents~~].

(b) In instances when there is not a design professional with overall responsibility, the owner of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver construction documents [~~is responsible for ensuring construction documents are submitted~~] to the department, a registered accessibility specialist, or a contract provider prior to filing an application for building permit or commencement of construction.

(c) An Elimination of Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation Page must be completed for each subject building or facility and submitted along with the applicable fees when the [~~not later than fourteen (14) calendar days after the~~] design professional or owner submits the construction documents.

[~~(d) In projects involving multiple phases, construction documents pertaining to each phase shall be submitted in accordance with this chapter.~~]

[~~(e) In projects involving "fast-track" construction, partial submittals of construction documents may be made. Construction documents pertaining to each portion of the work shall be submitted in accordance with these rules.~~]

[~~(f) When bid packages involve multiple facilities such as prototypes or other identical facilities, only one set of construction documents need be submitted. An Elimination of Architectural Barriers Project Registration form and applicable fees must be submitted for each separate building and facility. Construction documents noting site adaptations are required for each location.~~]

§68.51. Review of Construction Documents.

(a) After review, the owner and the person making the submission will be advised in writing of the plan review findings [~~results~~]. Construction documents will be approved only when the documents reflect compliance with all applicable accessibility standards [~~, although a conditional approval may be granted when it is determined that resubmittals are not warranted. Conditional approvals will refer to all deficiencies noted during the review which may not require substantial corrective modifications, but must be addressed in the design and construction of the building or facility~~].

(b) Construction documents received by the department, a registered accessibility specialist, or a contract provider shall become the property of the department.

(c) Design [~~When the department, a registered accessibility specialist, or a contract provider requests verification of design~~] revisions may be made by submitting to the department, a registered accessibility specialist, or a contract provider, [~~such verifications may be made by submission of~~] revised construction documents, change orders, addenda, and letters.

(1) Resubmittals received prior to the recorded estimated completion of construction will be reviewed. The owner and the person making the resubmittal will be advised of the findings [~~results~~]. Resubmittals will be approved only when the resubmittal reflects compliance with all applicable accessibility standards[~~, although a conditional approval may be granted when it is determined that additional submittals are not warranted~~].

(2) Resubmittals received after completion of construction, based on the recorded estimated completion of construction [~~date~~], may not be reviewed but will become a matter of record.

§68.52. Inspections.

(a) The owner of a building or facility subject to §469.101 of the Act [~~owner~~] shall obtain [~~request~~] an inspection from the department, a registered accessibility specialist, or a contract provider not [~~no~~] later than the first anniversary of the completion of construction. Request for inspection shall be made by completing the Request for

Inspection form and submitting it to the department, a registered accessibility specialist, or contract provider not later than 30 [~~thirty (30)~~] calendar days after the completion of construction [~~, renovation, modification, or alteration of the subject building or facility~~]. If the Request for Inspection form is submitted to the Department, the form must be accompanied by the applicable inspection fee in §68.80(a).

[~~(b) Inspections shall be performed during the normal operating hours of the facility. Any deviation from normal operating hours shall be at the convenience of the owner.~~]

(b) [~~(c)~~] The department, a registered accessibility specialist, or a contract provider shall receive [~~notify the owner of an impending inspection, and obtain~~] the Request for Inspection form [~~owner's authorization~~] prior to proceeding with the inspection.

(c) [~~(d)~~] The owner shall be advised in writing of the results of each inspection.

§68.53. Corrective Modifications Following Inspection.

(a) When corrective modifications [~~to achieve compliance~~] are required to achieve compliance, the department, a registered accessibility specialist, or a contract provider shall:

(1) provide the owner a list of deficiencies and a deadline for completing modifications; and

(2) grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) When corrective modifications [~~to achieve compliance~~] are required to achieve compliance, the owner shall provide written verification of the corrective modifications to the department, a registered accessibility specialist, or a contract provider.

§68.54. Review and Inspection of Buildings and Facilities with an Estimated Construction Cost of Less than $50,000 or Not Subject to the Act.

(a) When construction documents for projects with an estimated construction cost of less than $50,000 are mailed, shipped or hand-delivered with an Architectural Barriers Special Registration Form to the department along with the applicable fees in §68.80(b), after review, the owner and the person making the submission will be advised in writing of the findings. A request for inspection is not considered complete until the department receives the applicable inspection fee in §68.80(b). The owner shall be advised in writing of the results of each inspection.

(b) When construction documents for projects not subject to §469.003 of the Act are mailed, shipped or hand-delivered with an Architectural Barriers Special Registration Form to the department along with the applicable fees in §68.80(c), after review, the owner and the person making the submission will be advised in writing of the findings. A request for inspection is not considered complete until the department receives the applicable inspection fee in §68.80(c). The owner shall be advised in writing of the results of each inspection.

§68.55. Preliminary Plan Reviews.

When preliminary construction documents are mailed, shipped or hand-delivered with an Architectural Barriers Special Registration Form to the department along with the applicable fee in §68.80(d), after review, the owner and the person making the submission will be advised in writing of the findings.

§68.60. Notice of Substantial Compliance.

The Department shall provide a Notice of Substantial Compliance to the owner, at the owner's request through submission of a Notice of Substantial Compliance Request Form, after a newly constructed building or facility has had a satisfactory inspection or verification of corrective modifications has been submitted.

§68.65. Advisory Committee.

(a) The Elimination of Architectural Barriers Advisory Committee shall review rules and Technical Memoranda relating to the Elimination of Architectural Barriers program and recommend changes [~~in the rules and Technical Memoranda~~] to the Commission.

(b) - (e) (No change.)

(f) The committee shall be composed of building professionals and persons with disabilities who are familiar with architectural barriers problems and solutions. The committee shall be composed of [~~at least~~] nine members. Persons with disabilities must make up a majority of the membership. Committee members will serve staggered three-year terms.

§68.70. Registered Accessibility Specialists--Qualifications for Certification.

(a) An applicant seeking departmental certification as a registered accessibility specialist in order to perform plan review or inspection services shall meet the following minimum qualifications:

(1) Any one of the following:

(A) a degree in architecture, engineering, interior design, landscape architecture, or equivalent, and a minimum of one year experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; or

(B) eight years experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; or

(C) four years experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent, and certification as an accessibility inspector/plans examiner [~~specialist~~] granted by a model building code organization; and

(2) satisfactory completion of the Texas Accessibility Academy offered by the department or an approved provider; and

(3) pass an examination approved by the department.

[~~(b) An applicant seeking departmental certification as a registered accessibility specialist in order to provide inspection services shall meet the following minimum qualifications:~~]

[~~(1) Any one of the following:~~]

[~~(A) minimum of a high school diploma or equivalent; and~~]

[~~(B) either~~]

[~~*(i)* four years experience related to building inspections, accessibility inspections, building planning, accessibility design or review, or equivalent; or~~]

[~~*(ii)* two years experience related to building inspections, accessibility inspections, building planning, accessibility design or review, or equivalent, and certification as an accessibility specialist as granted by a model building code organization; and~~]

[~~(2) satisfactory completion of the Texas Accessibility Academy offered by the department or an approved provider; and~~]

[~~(3) pass an examination approved by the department.~~]

(b) [~~(c)~~] An applicant shall submit a complete application for certification on the Registered Accessibility Specialist Application

form [~~prescribed by the department~~], accompanied by all applicable [~~appropriate~~] fees. An applicant must complete all requirements, including satisfactory completion of an examination, no later than one year after the date the application is filed. If all requirements are not met within one year, a new application shall be submitted.

(c) [~~(d)~~] Each applicant who satisfies all requirements will be provided a wallet card and a wall certificate. The wallet card is the actual certificate of registration. [~~A wall certificate will be provided to a new registrant.~~]

[~~(e) Endorsement codes for certificates of registration are as follows: Plan review functions-R; Inspection functions-I; Plan review and inspection functions-RI.~~]

§68.73. Registration Requirements--Renewal.

(a) A complete application for registration renewal must be submitted on an approved department form with all required fees and must be filed by the expiration date, or the registration will expire.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

(c) A registered accessibility specialist shall not perform work requiring registration under the Act with an expired registration.

(d) A registered accessibility specialist shall not perform work requiring registration under the Act without satisfying the requirements of §68.74 prior to renewal.

§68.74. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a certificate of registration, a registered accessibility specialist must complete eight hours of continuing education in courses approved by the department, including four hours of instruction in one or more of the following topics:

(1) Texas state laws or rules that regulate the conduct of registered accessibility specialists;

(2) Texas Accessibility Standards;

(3) Technical Memoranda as published by the Department; or

(4) Registered Accessibility Specialist Procedures as published by the Department.

(c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.

(d) A registered accessibility specialist may not receive continuing education credit for attending the same course more than once.

(e) A registered accessibility specialist shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 469 - Elimination of Architectural Barriers;

(2) 16 Texas Administrative Code, Chapter 68 - Administrative Rules;

(3) Texas Accessibility Standards;

(4) Technical Memoranda as published by the Department;

(5) Registered Accessibility Specialist Procedures as published by the Department;

(6) Other laws and standards:

(A) Americans with Disabilities Act Accessibility Guidelines (ADAAG) or any other accessibility guidelines proposed or adopted by the Access Board or United States Department of Justice;

(B) Americans with Disabilities Act;

(C) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities; or

(D) Life safety codes; or

(7) Business practices.

(g) This section shall apply to providers and courses for registered accessibility specialists upon the effective date of this section.

(h) This section shall apply to certificates of registration, issued under §469.201 of the Act, that expire on or after September 1, 2007.

§68.75. Responsibilities of the Registered Accessibility Specialist.

(a) Registered accessibility specialists may set and collect fees for services, but are responsible for submitting to the department any fees the registered accessibility specialist may receive on behalf of the Department.

(b) Records maintained by registered accessibility specialists, as required by department rules or procedures, are subject to the provisions of the Texas Government Code, Chapter 552, Texas Public Information [~~Open Records~~] Act.

(c) Registered accessibility specialists shall comply with all procedures established by the department [~~relating to plan reviews and inspections~~].

[~~(d) Registered accessibility specialists shall verify the ownership of each building or facility for which they perform review or inspection services.~~]

(d) [~~(e)~~] Registered accessibility specialists shall notify the department of changes to contact information by submitting a Registered Accessibility Specialist Contact Update form within thirty (30) calendar days of a change occurring [~~including but not limited to name, address, phone number, and e-mail address~~].

§68.76. Standards of Conduct for the Registered Accessibility Specialist.

(a) *Competency*. The registered accessibility specialist shall be knowledgeable of and adhere to the Act, the rules, the TAS, Technical Memoranda published by the department, and all procedures established by the department [~~for plan reviews and inspections~~]. It is the obligation of the registered accessibility specialist to exercise reasonable judgment and skill in the performance of plan reviews, inspections, and related activities.

(b) - (d) (No change.)

(e) *Specific Rules of Conduct.* A registered accessibility specialist shall not:

(1) - (7) (No change.)

(8) perform a plan review, inspection, or a related activity on a building or facility that is or will be leased or occupied by an agency of the State of Texas, when the registered accessibility specialist is an employee of the state agency that will occupy the facility; [~~or~~]

(9) perform a plan review, inspection, or related activity on a building or facility wherein the registered accessibility specialist[~~, for compensation,~~] participated in creating the overall design of the current project; [~~.~~]

(10) use the Texas State seal without obtaining the appropriate license in accordance with Texas Business and Commerce Code, Chapter 17, §17.08(c); or

(11) represent himself or herself as an employee of the department or as a person hired by the department.

§68.80. Fees.

(a) Fees collected by the department will be assessed according to the fee schedule. Plan review and inspection fees collected by the department shall be determined by the estimated cost of construction for the project, not including site acquisition, furnishings, or equipment that is not part of the building mechanical systems. Fee Schedule: [~~Fees will be assessed according to the fee schedule (see §68.80(b)). In instances involving multiple facilities with identical drawings, but site adapted, and designed by the same individual or firm and bid as one package, the plan review fee shall be based on the total construction cost. However, separate inspection fees shall be required. The plan review fee and project filing fee must accompany the registration form and be submitted with the construction documents. The inspection fee must be paid and the department notified of a point of contact within thirty (30) calendar days of completion of construction.~~]
Figure: 16 TAC §68.80(a)

[~~(b) Fee Schedule:~~]
[~~Figure: 16 TAC §68.80(b)~~]

(b) [~~(c)~~] When the estimated construction cost is less than $50,000, and the project is registered with the department for plan review, inspection, or plan [~~for~~] review and inspection, the following shall apply:

(1) the project filing fee and a $200 plan review fee shall be paid for registration and review only;

(2) the project filing fee[~~, a $200 plan review fee,~~] and a $200 inspection fee shall be paid for registration[~~, review,~~] and inspection only; [~~or~~]

(3) the project filing fee, a $200 plan review fee, and a $200 inspection fee shall be paid for registration, plan review, and inspection; or [~~only.~~]

(4) for projects submitted to a registered accessibility specialist or a contract provider, only the project filing fee is required.

(c) When a project is not subject to the Act and is registered with the department for plan review, inspection, or for plan review and inspection, the following shall apply:

(1) the project filing fee and applicable plan review fee shall be paid for plan review services only;

(2) the project filing fee, and applicable inspection fee shall be paid for inspection services only;

(3) the project filing fee, applicable plan review fee, and applicable inspection fee shall be paid for plan review and inspection services; or

(4) for projects submitted to a registered accessibility specialist or a contract provider, only the project filing fee is required.

(d) When a project is registered with the department for preliminary review, the preliminary plan review fee shall be paid.

[~~(d) All fees must be paid prior to service being performed. All fees are non-refundable.~~]

(e) When a project is registered with the department after completion of construction, the late project filing fee [~~Late Project Filing Fee~~] and other applicable fees shall apply. The late project filing fee is in addition to the plan review fee and is required to be paid to the department for projects submitted to the department, a registered accessibility specialist, or contract provider. This fee is applicable when projects are registered after the completion of construction and is in lieu of the project filing fee.

(f) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(g) All fees are non refundable and must be paid prior to service being performed.

§68.90. Administrative Sanctions or Penalties.

(a) If a person violates any provision of the Act, the rules, TAS [~~Texas Government Code, Chapter 469, any provision of Title 16, Texas Administrative Code, Chapter 68, any provision of the Texas Accessibility Standards (TAS)~~], or an order of the Executive Director or Commission, proceedings may be instituted to impose administrative sanctions, administrative penalties, or both administrative penalties and sanctions in accordance with the provisions of the Act; [~~Texas Government Code, Chapter 469; Title 2,~~] Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60 [~~of this title~~] (relating to the Texas Commission of Licensing and Regulation).

(b) It is a violation of the Act for a person to perform a plan review or inspection function of the department, unless that person is a department employee, a registered accessibility specialist [~~with the appropriate endorsement~~], or a contract provider. A person who is not a department employee, registered accessibility specialist or contract provider [~~does not hold one of these designations~~] and performs a plan review or inspection function of the department is subject to administrative penalties in accordance with the Act or [~~Title 2,~~] Texas Occupations Code, Chapter 51 and Title 16, Texas Administrative Code, Chapter 60.

(c) Cheating on an examination is grounds for denial, suspension, or revocation of a license, imposition of an administrative penalty, or both.

§68.100. Technical Standards and Technical Memoranda.

(a) The Texas Department of Licensing and Regulation adopts by reference the Texas Accessibility Standards (TAS), April 1, 1994 edition.

(b) The Texas Department of Licensing and Regulation may [~~from time to time,~~] publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Elimination of Architectural Barriers Advisory Committee.

§68.101. State Leases.

(a) State leased buildings or facilities with an annual lease expense in excess of $12,000 shall be registered with the department by completing a State Lease Registration form and submitting it along with the applicable fee(s). This requirement applies to both initial lease

agreements and lease renewals. For state leased buildings or facilities that are being [~~newly~~] constructed, renovated, or modified [~~or substantially renovated~~], an Elimination of Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation page shall also be completed.

(b) (No change.)

(c) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) - (4) (No change.)

(5) Existing buildings and facilities are ones that have not been constructed, renovated, or modified [~~or altered~~] since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) - (H) (No change.)

§68.102. Public Right-of-Way Projects.

(a) For purposes of §68.80, the estimated cost of construction for the project shall be based on the pedestrian elements only. Construction [~~The construction~~] documents submitted for review are only required to include [~~would be those pertaining to the~~] pedestrian elements being constructed, renovated, modified, or altered as part of the project scope.

(b) Application of TAS shall be limited to those pedestrian elements being constructed, renovated, modified, or altered as part of the project scope. The pedestrian elements shall comply with applicable TAS 4.1 through 4.35 except as modified by this section.

(1) Sidewalks--At sidewalks constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 4.8.5. Where the adjacent roadway has running slopes of 5% or greater, the pedestrian access route shall not exceed the grade established for the adjacent roadway. EXCEPTION: The running slope of a pedestrian access route is permitted to be steeper than the grade of the adjacent roadway provided that the pedestrian access route complies with TAS 4.8.

(2) Curb Ramps--At curb ramps constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 4.8.5. For purposes of this section, non-signalized driveways are not considered to be hazardous vehicular areas.

(A) At perpendicular curb ramps constructed within the public right of way, detectable warnings complying with TAS 4.29.2 [~~4.29~~] at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp[~~, or textures complying with TAS 4.7.4,~~] shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area.

(B) At parallel curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29.2 [~~4.29~~] at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the landing shall be provided where the pedestrian access route enters a crosswalk [~~crosswalks~~] or other hazardous vehicular area [~~areas, or textures complying with TAS 4.7.4, shall be provided~~].

(C) At diagonal curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29.2 [~~4.29~~] at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp or landing, [~~or textures complying with TAS 4.7.4,~~] shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area. Additionally, the department will allow the detectable warning to be curved with the radius of the corner. The detectable warning shall be located so that the edge nearest the curb line is 6" minimum and 8 [~~10~~]" maximum from the curb line.

§68.103. Detention and Correctional Facilities.

For these facilities, in addition to accepting compliance with applicable TAS requirements, the department will also accept compliance with sections 231.3 and 232 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for Buildings and Facilities published by the Architectural and Transportation Barriers Compliance Board (Access Board) on July 23, 2004, at 69 Federal Register 44083 [~~Sections 11.2.3(1) and (2), and Chapter 12, in its entirety, of Title 36, CFR, Part 1191 Final Rule published in the Federal Register January 13, 1998~~].

§68.104. Elements, Spaces and Accessible Routes at Fire Stations.

At fire stations, common use spaces and elements accessed exclusively by fire-fighting personnel are only required to be adaptable. Additionally, at multi-level fire stations, levels accessed exclusively by fire-fighting personnel are not required to be served by an accessible route. Public spaces and elements within these facilities must comply with all applicable technical standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2006.

TRD-200605526
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 463-7348

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16 TAC §68.54, §68.74

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Government Code, Chapter 469, which directs the Commission to adopt standards, specifications, and other rules under that chapter, and under Texas Occupations Code, Chapters 51, which authorizes the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposals.

§68.54. Notice of Substantial Compliance.

§68.74. Registration Requirements--Renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2006.

TRD-200605527

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.11, 537.20 - 537.23, 537.26 - 537.28, 537.30 - 537.33, 537.35, 537.37, 537.39 - 537.41, 537.43 - 537.49

The Texas Real Estate Commission (TREC) proposes amendments to §§537.11, 537.20 - 537.23, 537.26 - 537.28, 537.30 - 537.33, 537.35, 537.37, 537.39 - 537.41, and 537.43 - 537.49, concerning Professional Agreements and Standard Contract Forms. The amendments would adopt by reference four revised contract forms to be used by Texas real estate licensees and would restructure and clarify the rules by removing redundant provisions.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendment to §537.11 would delete the text in subsection (a). The amendments to §§537.20 - 537.23, 537.26 - 537.28, 537.30 - 537.33, 537.35, 537.37, 537.39 - 537.41, and 537.43 - 537.49 would include the text deleted from §537.11(a) as appropriate for each section and form so that the description of each form would be included in the section that adopts the form by reference. In addition, the amendments to each section would include a reference to the commission's website as another means by which a person may obtain the form. Generally speaking the revisions to each of the forms are primarily non-substantive in nature and would update them for consistency with existing contract forms that have been revised in the recent past.

The amendments to §537.26 would adopt by reference Standard Contract Form TREC No. 15-4, Seller's Temporary Lease. Paragraph 12 would be revised to require the tenant to provide the landlord with door keys and access codes to allow access to the property during the term of the lease. Paragraph 24 would be revised to include a blank for e-mail addresses. The blank line for the execution date would be removed as the execution date is provided for in the contract to which the lease is attached.

The amendment to §537.27 would adopt by reference Standard Contract Form TREC No. 16-4, Buyer's Temporary Lease. Paragraph 12 would be revised to require the tenant to provide the landlord with door keys and access codes to allow access to the property during the term of the lease. Paragraph 14 would be revised to add equipment and appliances to the list of specific expenses of repairing, replacing and maintaining the property that the buyer/tenant will bear. Paragraph 24 would be revised to include a blank for e-mail addresses. The blank line for the execution date would be removed as the execution date is provided for in the contract to which the lease is attached.

The amendment to §537.33 would adopt by reference Standard Contract Form TREC No. 26-5, Seller Financing Condition Addendum. Regarding proposed revisions to paragraph C, a blank line for the interest rate of the note would be added; a provision addressing the interest rate of matured unpaid amount would be added; subparagraphs (2) and (3) would provided for a choice of monthly installments rather than an option to fill in the blanks on the type of installment; a note would be added to subparagraph D(1) which states that the buyer's liability to pay the note will continue unless the buyer obtains a release of liability from the Seller; subparagraph D(2)(a) would be revised by adding "ad valorem" before "taxes".

The amendment to §537.37 would adopt by reference Standard Contract Form TREC No. 30-6, Residential Condominium Contract (Resale). The change to the form would fix a typographical error in paragraph 7.F.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments and forms are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§537.11. Use of Standard Contract Forms.

(a) [~~Standard Contract Form TREC No. 9-6 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-4 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-5 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-2 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-3 is promulgated for use as a residential lease when a seller temporarily oc-~~

~~cupies property after closing. Standard Contract Form TREC No. 16-3 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-7 is promulgated for use in the resale of residential real estate. Standard Contract Form TREC No. 23-6 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-6 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-5 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-4 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 30-5 is promulgated for use in the resale of a residential condominium unit Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-1 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC Form No. 36-4 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-2 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-1 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-6 is promulgated for use as an amendment to promulgated forms of contracts. TREC Form No. 40-2 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. TREC Form No. 41-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. TREC Form No. 42-0 is promulgated for use as a notice that buyer cannot obtain financing pursuant to the Third Party Financing Condition Addendum.~~]

[~~(b)~~] When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate licensee shall use only those contract forms promulgated by the Texas Real Estate Commission for that kind of transaction with the following exceptions:

(1) transactions in which the licensee is functioning solely as a principal, not as an agent;

(2) transactions in which an agency of the United States government requires a different form to be used;

(3) transactions for which a contract form has been prepared by the property owner or prepared by an attorney and required by the property owner;

(4) transactions for which no standard contract form has been promulgated by the Texas Real Estate Commission, and the licensee uses a form prepared by an attorney at law licensed by this state and approved by the attorney for the particular kind of transactions involved or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission.

(b) [~~(c)~~] A licensee may not practice law, offer, give nor attempt to give advice, directly or indirectly; the licensee may not act as a public conveyancer nor give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate; the licensee may not give opinions concerning the status or validity of title to real estate; and the licensee may not attempt to prevent nor in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer. However, nothing herein shall be deemed to limit the licensee's fiduciary obligation to disclose to the licensee's principals all pertinent facts which are within the knowledge of the licensee, including such facts which might affect the status of or title to real estate.

(c) [~~(d)~~] A licensee may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. In negotiating real estate transactions, the licensee may fill in forms for such transactions, using exclusively forms which have been approved and promulgated by the Texas Real Estate Commission or such forms as are otherwise permitted by these rules. When filling in such a form, the licensee may only fill in the blanks provided and may not add to or strike matter from such form, except that licensees shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties. A licensee may not add to a promulgated earnest money contract form factual statements or business details for which a contract addendum, lease or other form has been promulgated by the commission for mandatory use. Nothing herein shall be deemed to prevent the licensee from explaining to the principals the meaning of the factual statements and business details contained in the said instrument so long as the licensee does not offer or give legal advice. It is not the practice of law as defined in this Act for a real estate licensee to complete a contract form which is either promulgated by the Texas Real Estate Commission or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee for trial use may be used on a voluntary basis after being approved by the commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and approved by the commission to replace previously promulgated forms may be used by licensees on a voluntary basis prior to the effective date of rules requiring use of the replacement forms.

(d) [~~(e)~~] Where it appears that, prior to the execution of any such instrument, there are unusual matters involved in the transaction which should be resolved by legal counsel before the instrument is executed or that the instrument is to be acknowledged and filed for record, the licensee shall advise the principals that each should consult a lawyer of the principal's choice before executing same.

(e) [~~(f)~~] A licensee may not employ, directly or indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which the licensee is acting as an agent. The licensee may employ and pay for the services of a lawyer to represent only the licensee in a real estate transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transactions.

(f) [~~(g)~~] A licensee shall advise the principals that the instrument they are about to execute is binding on them.

(g) [~~(h)~~] Forms approved or promulgated by the commission may be reproduced only from the following sources:

(1) numbered copies obtained from the commission, whether in a printed format or electronically reproduced from the files available on the commission's Internet site;

(2) printed copies made from copies obtained from the commission;

(3) legible photocopies made from such copies; or

(4) computer-driven printers following these guidelines.

(A) The computer file or program containing the form text must not allow the end-user direct access to the text of the form and may only permit the user to insert language in blanks in the forms or to strike through language at the direction of the parties to the contract.

(B) Typefaces or fonts must appear to be identical to those used by the commission in printed copies of the particular form.

(C) The text and number of pages must be identical to that used by the commission in printed copies of the particular form.

(D) The spacing, length of blanks, borders and placement of text on the page must appear to be identical to that used by the commission in printed copies of the form.

(E) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.

(h) [~~(i)~~] Forms approved or promulgated by the commission must be reproduced on the same size of paper used by the commission with the following changes or additions only.

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in any blank provided for that purpose.

§537.20. Standard Contract Form TREC No. 9-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-6 approved by the Texas Real Estate Commission in 2006 for use in the sale of unimproved property where intended use is for one to four family residences [~~2005~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.21. Standard Contract Form TREC No. 10-4.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-4 approved by the Texas Real Estate Commission in 2002 for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.22. Standard Contract Form TREC No. 11-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No.11-5 approved by the Texas Real Estate Commission in 2004 for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.23. Standard Contract Form TREC No. 12-1.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 12-1 approved by the Texas Real Estate Commission in 1992 for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.26. Standard Contract Form TREC No. 15-4 [~~3~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-4 [~~3~~] approved by the Texas Real Estate Commission in 2006 for use as a residential lease when a seller temporarily occupies property after closing [~~1998~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, [~~Capitol Station,~~] Austin, Texas 78711, www.state.tx.us.

§537.27. Standard Contract Form TREC No. 16-4 [~~3~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-4 [~~3~~] approved by the Texas Real Estate Commission in 2006 for use as a residential lease when a buyer temporarily occupies property prior to closing [~~1998~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.state.tx.us.

§537.28. Standard Contract Form TREC No. 20-7.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-7 approved by the Texas Real Estate Commission in 2006 for use in the resale of residential real estate [~~2005~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.30. Standard Contract Form TREC No. 23-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-6 approved by the Texas Real Estate Commission in 2006 for use in the sale of a new home where construction is incomplete [~~2005~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.31. Standard Contract Form TREC No. 24-6.

The Texas Real Estate. Commission adopts by reference standard contract form TREC No. 24-6 approved by the Texas Real Estate Commission in 2006 for use in the sale of a new home where construction is completed [~~2005~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.32. Standard Contract Form TREC No. 25-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-5 approved by the Texas Real Estate Commission in 2006 for use in the sale of a farm or ranch [~~2005~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.33. Standard Contract Form TREC No. 26-5 [~~4~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 26-5 [~~4~~] approved by the Texas Real Estate Commission in 2006 for use as an addendum concerning seller financing [~~2001~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.35. Standard Contract Form TREC No. 28-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 28-0 approved by the Texas Real Estate Commission in 1993 for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.37. Standard Contract Form TREC No. 30-6 [~~5~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-6 [5] approved by the Texas Real Estate Commission in 2006 for use in the resale of a residential condominium unit [2005]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.39. Standard Contract Form TREC No. 32-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 32-0 approved by the Texas Real Estate Commission in 1994 for use as a condominium resale certificate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.40. Standard Contract Form TREC No. 33-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 33-0 approved by the Texas Real Estate Commission in 1994 for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.41. Standard Contract Form TREC No. 34-1.

The Texas Real Estate Commission adopts by reference standard contract form TREC No.34-1 approved by the Texas Real Estate Commission in 2002 for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway [2001]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.43. Standard Contract Form TREC No. 36-4.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-4 approved by the Texas Real Estate Commission in 2006 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association [2005]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.44. Standard Contract Form TREC No. 37-2.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 37-2 approved by the Texas Real Estate Commission in 2006 for use as a resale certificate when the property is subject to mandatory membership in an owners' association [2005]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.45. Standard Contract Form TREC No.38-1.

The Texas Real Estate Commission adopts by reference standard contract form TREC No.38-1 approved by the Texas Real Estate Commission in 2002 for use as a notice of termination of contract [2001]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.46. Standard Contract Form TREC No. 39-6.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-6 approved by the Texas Real Estate Commission in 2006 for use as an amendment to promulgated forms of contracts [2005]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.47. Standard Contract Form TREC No. 40-2.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 40-2 approved by the Texas Real Estate Commission in 2006 for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing [2005]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§537.48. Standard Contract Form TREC No. 41-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 41-0 approved by the Texas Real Estate Commission in 2002 for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan [2001]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

§535.49. Standard Contract form TREC No. 42-0.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 42-0 approved by the Texas Real Estate Commission in 2004 for use as a notice that buyer cannot obtain financing pursuant to the Third Party Financing Condition Addendum. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2006.

TRD-200605401
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 465-3900

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TITLE 28. INSURANCE

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §§276.1, 276.2, 276.5

The Office of Injured Employee Counsel (OIEC) proposes new §276.1, concerning chapter definitions; §276.2, concerning OIEC's mission; and §276.5, concerning employer's notice requirement of OIEC's Ombudsman Program. The proposed new §276.1 is necessary to provide a place for chapter definitions and §276.2 is necessary to provide clarity to OIEC's statutory mission. New §276.5 is necessary to implement Texas Labor Code §404.153 and §404.154, which requires employers to post notice in the work place so their employees may be informed as to the services performed by the Ombudsman Program in accordance to House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005.

Proposed new §276.1 is needed to serve as a single destination for defining terms and phrases within Chapter 276. Providing a single destination for chapter definitions along with defining the terms "OIEC" and "ombudsman" is necessary to establish and explain the purpose of OIEC as a result of HB 7.

Proposed new §276.2 is needed to establish and clarify OIEC's statutory mission to provide quality services, educate, assist, and serve as a voice for injured employees in the workers' compensation system. This section is necessary to clarify OIEC's statutory obligation to the injured employees of Texas and to other workers' compensation system participants.

Ms. Luz Loza, Director of Injured Employee Services, has determined that for each year of the first five years the proposed sections are in effect, there shall be minimal fiscal impact to state and local governments as a result of the enforcement or administration of the rules. It is anticipated that most employers participating in the workers' compensation system have access to the internet and will be able to download and print the employer notification that would be required by §276.5. However, should an employer contact OIEC to request a copy of the notice, the cost of postage, currently at 39 cents per stamp, will be needed to send the employer the notice. Should every covered employer request OIEC to physically mail a copy of the notice, as opposed to sending the notice electronically or having the notice downloaded from OIEC's website as anticipated, a total postage cost of $75,061 may be incurred by the State of Texas. This estimate is based on the current cost of postage and the latest data provided by Texas Department of Insurance's Workers' Compensation Research and Evaluation Group's October 2004 presentation, "Employer Participation in Texas, Workers' Compensation Estimates in 2004," that estimates 194,767 employers participate in the workers' compensation system. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Loza has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections shall be clear understanding of OIEC's statutory mission to assist and advocate on behalf of the injured employees of Texas and an employer and employee population that is more informed as to the services provided by the Ombudsman Program.

All stakeholders will benefit from an increased understanding of OIEC's purpose and the services the Ombudsman Program provides in the recently overhauled workers' compensation system as a result of HB 7. Employers will benefit from an awareness of services provided by the Ombudsman Program, which is financed through workers' compensation premiums, and employees will benefit from the awareness of the Ombudsman Program that is specifically designed to assist them should they ever incur a work-related injury. Informing injured employees of OIEC early on in the process will increase the likelihood that they will be educated as to their rights and responsibilities within the workers' compensation system. It is anticipated that this increased education will help injured employees get in contact earlier with the appropriate agency to provide assistance that they require. As a result, it is likely that more injured employees' compensable injuries will be reported within the required 30-day timeframe and therefore covered by insurance carriers. The workers' compensation system is anticipated to function more efficiently as disputes are resolved more quickly, and as a result, the overriding objectives of getting injured employees well and back to work will be furthered.

Further, any additional economic costs either exist under current rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 21, 2006 to Brian White, Counsel for Policy Development, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Counsel for Policy Development.

The new sections are proposed pursuant to Texas Labor Code §§404.004(a), 404.153, 404.154 and 404.006. Section 404.004 requires OIEC to prepare information of public interest describing the functions of the agency. Section 404.153 provides that each employer shall notify its employees of the ombudsman program as prescribed by OIEC. Section 404.154 provides that OIEC shall widely disseminate information about the ombudsman program. Section 404.006 provides that the public counsel shall adopt rules as necessary to implement Chapter 404 of the Labor Code.

The following sections are affected by this proposal:

Rule: §§276.1, 276.2, and 276.5

Statute: Texas Labor Code, §§404.151; 404.152; 404.154; 404.103; 404.105; and 404.006.

§276.1. Definitions.

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

(1) Office of Injured Employee Counsel (OIEC)--An independent state agency created by the 79th Texas Legislature, Regular Session, 2005, to represent the interests of injured employees in the workers' compensation system.

(2) Ombudsman--A specially trained employee of the Office of Injured Employee Counsel (OIEC) who assists injured employees with disputes in the workers' compensation system. An ombudsman shall have a workers' compensation adjuster's license and complete a comprehensive training program designed specifically for OIEC ombudsmen.An ombudsman shall assist injured employees with benefit review conferences, contested case hearings, preparation of appeals, and other matters in the workers' compensation system.

§276.2. The Mission of the Office of Injured Employee Counsel.

(a) The Office of Injured Employee Counsel (OIEC) is a state agency with a mission:

(1) to educate and assist injured employees and advocate for them as a class in order to achieve a balanced workers' compensation system which protects the rights of all injured employees in Texas; and

(2) to provide quality services and assistance to guide injured employees through the workers' compensation system.

(b) OIEC offers injured employees educational materials, assistance in the workers' compensation administrative dispute resolution process, customer service, and provides referrals to appropriate

local, state, and federal agencies. On behalf of the injured employees of Texas, OIEC shall:

(1) provide assistance to injured employees in the workers' compensation system;

(2) act as an advocate on behalf of injured employees as a class in the Texas Department of Insurance and the Division of Workers' Compensation rulemaking process;

(3) assist injured employees with contacting appropriate licensing boards to file complaints;

(4) assist injured employees with referrals to local, state, and federal financial assistance, rehabilitation, work placement programs, and other appropriate social services;

(5) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of the injured employees;

(6) assist injured employees, through the ombudsman program, with:

(A) the workers' compensation administrative dispute resolution system; and

(B) the resolution of complaints pending at the Texas Department of Insurance.

§276.5. Employer's Notification of Ombudsman Program to Employees.

(a) All employers participating in the workers' compensation system shall post notice of the Office of Injured Employee Counsel's (OIEC) Ombudsman Program. This notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis.

(b) This notice of the Ombudsman Program shall be publicly posted in English, Spanish, and any other language that is common to the employer's employees.

(c) This notice shall be the text provided by OIEC without any additional words or changes and may be obtained by:

(1) Downloading the form on OIEC's website at: www.oiec.state.tx.us; or

(2) Requesting the notice by calling OIEC's toll-free telephone number at: 1-866-EZE-OIEC (1-866-393-6432).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605462
Brian M. White
Counsel for Policy Development
Office of Injured Employee Counsel
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 804-4186

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.9

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC §519.9 to make the rule consistent with appropriation restrictions concerning how the agency is required to pay state funds to soil and water conservation districts (SWCDs). The changes consist of: §519.9(a) is being amended to state that the State Board will provide notice to districts of the amount allocated to them rather than cause 25 percent of their allocation to be sent to them at the beginning of the fiscal year; §519.9(b) is amended to delete the word additional and state that payments will be made on a reimbursement basis; and §519.9(c) is proposed to be deleted because the district will no longer have any unexpended or unobligated balances on August 31 since payment is a reimbursement.

Mr. Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zajicek has also determined that for the first five year period this amended rule is in effect, the public benefit anticipated as a result of administering these rules will be a better accountability of state funds.

There is no anticipated cost to small businesses or individuals resulting from this amended rule.

Comments on the proposed rule may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

The amended rule is proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the agriculture Code.

No other statutes, article, or codes are affected by this proposal.

§519.9. Payment of State Funds.

(a) On the first working day of each fiscal year or as soon as possible thereafter, the State Board shall provide notice [~~cause to be paid~~] to each district [~~25%~~] of the amount allocated to that district for the fiscal year.

(b) [~~Additional~~] payments shall be made on a reimbursement basis.

(1) each district receiving funds under provisions of this chapter shall file with the State Board a monthly report of expenditures no later than the 30th of the month following the end of each reporting period on forms provided by the State Board.

(2) upon verification that the reports are in order, the State Board shall cause payment for reimbursement of expenses to be made to the district.

(3) upon receipt of the last monthly report, the State Board shall perform a reconciliation of funds and pay the claim accordingly.

(4) the district has complied with the reporting requirements of §519.10 and §519.11 of this chapter.

[~~(c) any unexpended and unobligated balance on the district books at August 31 will be treated as a payment toward that districts allocation for the subsequent fiscal year.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2006.

TRD-200605520
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: November 19, 2006
For further information, please call: (254) 773-2250

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.546

The Comptroller of Public Accounts proposes an amendment to §3.546 concerning taxable capital: nexus. The amendment to subsection (a) reflects a legislative change made from 78th Legislature, 2003, House Bill 2424. The amendment to subsection (d) reflects the repeal of §3.542 and subsequent placement of the trade show exemption in §3.541.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing guidance to corporations potentially doing business in Texas or those attending trade shows in Texas. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.001(a) and §171.084.

§3.546. Taxable Capital: Nexus.

(a) A foreign corporation is liable for the franchise tax if it is [~~authorized to do business in this state or if it is actually~~] doing business in this state.

(b) A corporation is doing business in this state, for the taxable capital component of the franchise tax, when it has sufficient contact with this state to be taxed without violating the United States Constitution. A corporation may be subject to the taxable capital component, but not subject to the earned surplus component [,] because of Public Law 86-272. See §3.554 of this title (relating to Earned Surplus: Nexus) for the nexus standards for the earned surplus component of the franchise tax.

(c) (No change.)

(d) See §3.541(j) [~~§3.542~~] of this title (relating to Exemptions [~~Exemption: Trade Show~~]) for information concerning the trade show exemption under [~~the~~] Tax Code, §171.084.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 5, 2006.

TRD-200605448
Timothy Mashburn
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 475-0387

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34 TAC §3.549

The Comptroller of Public Accounts proposes an amendment to §3.549, concerning taxable capital: apportionment. The amendment to subsection (e)(5) reflects a clarification of agency policy. The amendment to subsection (e)(28) reflects the court ruling in Gulf Publishing Co. v. Rylander, Travis County District Court, February 2001. The amendment to subsection (e)(38) reflects a clarification of agency policy. The amendment to subsection (e)(41)(I) reflects a legislative change made from 78th Session, 2003, House Bill 2424.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be in providing guidance to corporations in apportioning receipts for taxable capital. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§171.103, 171.104, 171.105, 171.106 and 171.112.

§3.549. Taxable Capital: Apportionment.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Gross receipts--All revenues that would be recognized annually under a generally accepted accounting principles method of accounting, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided for in this section or [~~the~~] Tax Code, Chapter 171.

(6) - (7) (No change.)

(8) Revenue--Except as otherwise specifically provided for in this section or [~~the~~] Tax Code, Chapter 171, revenue means the value of inflows of economic resources from separate legal entities for delivering or producing goods, rendering services, or carrying out other activities that constitute the entity's operations.

(9) (No change.)

(c) Apportionment formula. Unless otherwise required under the Tax Code, this section, or rules that apply under Tax Code, Chapter 171, a corporation's taxable capital is apportioned to this state to determine the amount of franchise tax due by multiplying the corporation's taxable capital by a fraction, the numerator of which is the corporation's gross receipts from business done in this state and the denominator of which is the corporation's gross receipts from its entire business. For reports that are originally due on or after January 1, 1992, corporations whose taxable capital is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company as defined by Internal Revenue Code, §851(a), should refer to Tax Code, §171.106(c), relating to the apportionment of gross receipts from services for regulated investment companies. For reports that are originally due on or after January 1, 1999, corporations whose taxable capital is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan, as defined in subsection [~~paragraph~~] (b)(9) of this section should refer to Tax Code, §171.106(d), relating to the apportionment of gross receipts from services for employee retirement plans.

(d) General rules for reporting gross receipts.

(1) - (4) (No change.)

(5) A corporation whose taxable capital is less than $1 million may report its gross receipts according to the method used in the corporation's most recent federal income tax return originally due on or before the date the franchise tax report is originally due. To determine if taxable capital is less than $1 million, the corporation must apply the accounting methods used in computing that federal income tax return unless another method is required under a specific provision of this title or [~~the~~] Tax Code, Chapter 171. See §3.547 of this title (relating to Taxable Capital: Accounting Methods) for information on accounting methods or changes in accounting methods.

(6) (No change.)

(7) A corporation may not change its accounting methods used to calculate gross receipts more often than once every four years without express written consent of the comptroller, unless the provisions of [~~the~~] Tax Code, §171.111, apply due to an election under that section.

(8) - (9) (No change.)

(10) Except as otherwise provided under [~~the~~] Tax Code, §171.112, a corporation is required to use the same accounting methods in computing gross receipts as it uses in computing surplus. Accounting methods are those methods of allocating the cost, benefit, or expense of an asset or liability to accounting periods.

(e) Treatment of specific items in computing gross receipts.

(1) - (4) (No change.)

(5) Membership or enrollment [~~Club membership~~] fees paid for access to benefits. Membership or enrollment [~~Club membership~~] fees paid for access to benefits are receipts from the sale of an intangible asset and are apportioned to the legal domicile of the payor [~~Texas receipts if the place where the club's employees or agents perform the service of providing access to the club benefits is in Texas~~].

(6) - (19) (No change.)

(20) Health care supplies and food. Deductions from Texas receipts for sales of health care supplies and food exempted from sales and use tax by [~~the~~] Tax Code, §151.313 or §151.314(a), will be allowed only for the initial sale of items shipped from a location outside Texas directly to a purchaser in Texas. The deduction does not apply when the manufacturer ships the items from outside Texas to an outlet or storage facility in Texas and later sells them.

(21) - (25) (No change.)

(26) Litigation awards. Revenue realized from litigation awards is a gross receipt except that compensatory damages for fire or other casualty losses on property are gross receipts only to the extent that the compensatory damages exceed the net book value of the property. Litigation awards are apportioned to the legal domicile of the payor of the proceeds; however, if the litigation award is intended to replace receipts for which another apportionment rule is provided in this section, then the apportionment must be made in accordance with that rule. For example, if a vendor sues to recover on a sale of goods in Texas to a Delaware corporation, then a judgment for the amount of a sale would not convert the receipts from Texas receipts to Delaware receipts. Subsection [~~Paragraphs~~] (f)(2) and (7) of this section are controlling for judgments, compromises, or settlements that relate to natural gas production.

(27) (No change.)

(28) Newspapers and magazines. All advertising revenues of a newspaper or magazine, including revenues derived from out-of-state advertisements, are apportioned to Texas based on the number of newspapers or magazines distributed in Texas [~~All advertising revenue, including that from out-of-state advertisement, of a newspaper or magazine that transacts its primary business activities within Texas constitutes Texas receipts~~]. All other receipts must be apportioned in accordance with the apportionment rules otherwise set out in the section. For example, sales of newspapers or magazines are subject to the provisions of paragraph [~~(e)~~] (41) of this subsection [~~section~~].

(29) - (37) (No change.)

(38) Services. Service receipts are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas. For reports that are originally due on or after January 1, 1992, corporations that have taxable capital that is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company should refer to Tax Code, §171.106(c), for information on apportionment of such taxable capital. For reports that are originally due on or after January 1, 1999, corporations that have taxable capital that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan as de-

scribed in subsection [~~paragraph~~] (b)(9) of this section, should refer to Tax Code, §171.106(d), for information on apportionment of such taxable capital. Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not Texas receipts. For reports due on or after April 21, 2006, receipts from the servicing of loans secured by real property are apportioned to the location of the real property that secures the loan being serviced.

(39) - (40) (No change.)

(41) Tangible personal property. Examples of transactions involving the sale of tangible personal property and which result in Texas receipts include, but are not limited to, the following:

(A) - (H) (No change.)

(I) sales to which the throwback rule applies. For reports due on or after October 2, 1984, each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation is thrown back to Texas as a Texas receipt (i.e., the throwback rule). This subparagraph will control if it conflicts with any other provision of this rule. Another state means a state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States. Subject to taxation means constitutional nexus. The seller need not pay tax to the other state; it only has to have enough contact with the other state that the other state could tax the seller. If the seller is doing business in, [~~has a certificate of authority,~~] or is incorporated in the other state, the seller is subject to taxation in that state. Voluntarily collecting or paying tax to another state, by itself, is not enough contact to make sales to the other state non-Texas receipts. A corporation which performs any of the activities listed in §3.546(c) of this title (relating to Taxable Capital: Nexus) for taxation of taxable capital in the other state will be considered subject to taxation in the other state. The selling corporation must have nexus in the other state during the accounting year upon which the tax is based. The corporation has the burden of proving it is subject to taxation in the other state.

(42) - (46) (No change.)

(47) Trusts. Distributions to a corporation that is the beneficiary of a trust are apportioned to the legal domicile of the trust. See subsection [~~paragraph~~] (b)(6) of this section regarding the legal domicile of a trust.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 5, 2006.

TRD-200605449
Timothy Mashburn
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 475-0387

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34 TAC §3.557

The Comptroller of Public Accounts proposes an amendment to §3.557, concerning earned surplus: apportionment. The amendment to subsection (e)(5) and (33)(D) reflects clarification of agency policy.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be in providing guidance to corporations in apportioning receipts for earned surplus from membership fees and from servicing loans secured by real property. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§171.1032, 171.1051, 171.106, and 171.110.

§3.557. Earned Surplus: Apportionment.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Employee retirement plan--A plan or other arrangement that qualifies under Internal Revenue Code, §401(a) or that satisfies the requirement of Internal Revenue Code, §403, or a government plan described in Internal Revenue Code, §414(d).

(5) - (10) (No change.)

(11) Tax reporting period--For the purposes of this section, the period upon which the tax is based under [~~the~~] Tax Code, §171.1532 or §171.0011.

(c) Apportionment formula. Unless otherwise required under Tax Code, Chapter 171, or by this section or other sections promulgated under Tax Code, Chapter 171, a corporation's earned surplus is apportioned to this state to determine the amount of franchise tax due by multiplying the corporation's earned surplus by a fraction, the numerator of which is the corporation's gross receipts from business done in this state and the denominator of which is the corporation's gross receipts from its entire business. Examples of methods of apportionment that are "otherwise required" include, but are not limited to the following:

(1) (No change.)

(2) For reports that are originally due on or after January 1, 1992, corporations that have taxable earned surplus that is derived, directly or indirectly from the sale of services to or on behalf of a regulated investment company as defined by [~~the~~] Internal Revenue Code, §851(a), should refer to Tax Code, §171.106(c), relating to the apportionment of gross receipts from services for regulated investment companies.

(3) (No change.)

(d) General rules for reporting gross receipts.

(1) - (4) (No change.)

(5) Any item of revenue that is excluded from net taxable earned surplus under Texas law or United States law is excluded from gross receipts everywhere and gross receipts in Texas. For example, any amount that is excluded from earned surplus under [~~the~~] Internal Revenue Code, §78 or §§951-964, is excluded from gross receipts.

(6) - (8) (No change.)

(9) If the comptroller determines that commonly controlled affiliated corporations have not entered into a transaction on an arm's length basis, then the comptroller may distribute or allocate income and deductions from such transaction as necessary to prevent franchise tax avoidance, provided that such adjustments are authorized under application of principles that are found in [~~the~~] Internal Revenue Code, §482, and regulations thereunder.

(10) - (11) (No change.)

(e) Treatment of specific items in the computation of receipts.

(1) - (4) (No change.)

(5) Membership or enrollment [~~Club membership~~] fees paid for access to benefits. Membership or enrollment [~~Club membership~~] fees paid for access to benefits are receipts from the sale of an intangible asset and are apportioned to the legal domicile of the payor [~~Texas receipts if the place where the club's employees or agents perform the service of providing access to club benefits is in Texas~~].

(6) - (32) (No change.)

(33) Services. Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas.

(A) (No change.)

(B) For reports that are originally due on or after January 1, 1999, corporations that have taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan as defined in subsection (b)(4) of this section should refer to [~~the~~] Tax Code, §171.106(d), for information on apportionment of such taxable earned surplus.

(C) (No change.)

(D) For reports due on or after April 21, 2006, receipts from the servicing of loans secured by real property are apportioned to the location of the real property that secures the loan being serviced.

(34) - (42) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 5, 2006.

TRD-200605450
Timothy Mashburn
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.1, concerning Licensing of Training Providers. Subsection (b)(2) is changed to increase time period for contractual training provider agreements from two (2) years to five (5) years. Subsection (d) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section will be in effect there will be a positive benefit to law enforcement contractual training providers. Contractual training providers are required by §215.1 to renew their training contract every two (2) years. This rule changes brings contractual training provider in line with law enforcement academies and academic alternative program for contract renewals and reduces time an manpower required for two year renewals.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this proposal.

§215.1. Licensing of Training Providers.

(a) (No change.)

(b) The commission issues these licenses or contracts for a specified period of time:

(1) (No change.)

(2) five [~~two~~] years for a contractual training provider;

(3) - (4) (No change.)

(c) (No change.)

(d) The effective date of this section is March 1, 2007 [~~June 1, 2006~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 4, 2006.

TRD-200605424
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 936-7717

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37 TAC §215.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.9, concerning Training Coordinator. Subsection (d) is changed to allow upon petition of the chief administrator, the executive director to waive the requirement for a full time paid training coordinator if the training provider does not employ a full time paid staff. Subsection (e) is added to reflect effective date of change.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section will be in effect there will be a positive benefit to law enforcement academies, contractual training, and academies alternative providers. This rule change would give the training provider chief administrator the ability to request a waiver of the requirement of a full time paid training coordinator if the training provider does not employ a full time paid staff.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General powers which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, §1701, §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this proposal.

§215.9. Training Coordinator.

(a) - (c) (No change.)

(d) Upon petition of the chief administrator of a training provider that does not have a full-time paid staff the commission may, at the discretion of the executive director, waive the requirement for a full-time paid training coordinator.

(e) [~~(d)~~] The effective date of this section is March 1, 2007 [~~June 1, 2004~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 4, 2006.

TRD-200605425
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 936-7717

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CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.2

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §219.2, concerning Reciprocity for Out of State Peace Officers and Federal Criminal Investigators. The rule sets out the procedure for which an out of state peace officer or federal criminal investigators may become eligible to apply for and be issued an endorsement to take the state peace officer licensing examination. This rule is created to specifically address and provide clarity and guidance to individuals who seek to become Texas peace officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications to state and local government as a result of administering the section. The Commission will be charged with reviewing applications and accompanying documentation as a result of this new section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section will be in effect there will be a positive benefit to law enforcement contractual training providers. Contractual training providers are required by §215.1 to renew their training contract every two (2) years. This rule change brings contractual training provider in line with law enforcement academies and academic alternative program for contract renewals and reduces time an manpower required for two year renewals.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The new section as proposed is in compliance with Texas Occupations Code, §1701.304, Examination.

No other code, article, or statute is affected by this proposal.

§219.2. Reciprocity for Out-of-State Peace Officers and Federal Criminal Investigators.

(a) To be eligible to take a state licensing examination, an out of state or federal criminal investigator must comply with all provisions of §219.1 of this title and this section.

(b) Prospective out-of-state peace officer and federal criminal investigator applicants for peace officer licensing in Texas must:

(1) meet all statutory licensing requirements of the state of Texas and the rules of the Commission;

(2) successfully complete a supplementary peace officer training course, the curriculum of which is developed by the Commission; and

(3) successfully pass the Texas Peace Officer Licensing Examination.

(c) Requirements (Peace Officers): applicants who are peace officers from other U.S. states must meet the following requirements:

(1) demonstrate a successful completion of a state POST-approved (or state licensing authority) basic police officer training academy (with equivalent course topics and hours of training at the time of initial certification or licensure);

(2) be currently licensed or certified as a peace officer by a state POST (or state licensing authority);

(3) the applicant's license or certificate must never have been, nor currently be in the process of being, surrendered, suspended, or revoked; and

(4) have honorably served (employed, benefits eligible) as a sworn peace officer for twelve consecutive months, following initial basic training, with an agency in the state where the license or certificate was issued.

(d) Requirements (Federal): The Texas Code of Criminal Procedures Section 2.122 recognizes certain named criminal investigators of the United States as having the authority to enforce selected state laws by virtue of their authority. These individuals are deemed to have the equivalent training for licensure consideration.

(e) Qualifying Federal Officers must:

(1) have successfully completed an approved federal agency law enforcement training course (equivalent course topics and hours) at the time of initial certification or appointment;

(2) have honorably served (employed, benefits eligible) in one of the aforementioned federal capacities for twelve consecutive months, following initial basic training; and

(3) be subject to continued employment or eligible for re-hire (excluding retirement).

(f) Procedures for requesting an endorsement to take state licensing examination:

(1) complete the Commission application for endorsement and have it properly notarized;

(2) attach a certified check or money order for the currently required fee (non-refundable); and

(3) submit the application and fee with all required documents to the Commission by U.S. mail, by courier, or in person.

(g) Required documents to accompany the application for endorsement:

(1) a certified or notarized copy of the basic training certificate for a peace officer, a certified or notarized copy of a federal agent's license or credentials, or a certified or notarized copy of the peace officer license or certificate issued by the state POST;

(2) a notarized statement from the state POST, current employing agency or federal employing agency revealing any disciplinary action(s) that may have been taken against any license or certificate issued by that agency or any pending action;

(3) a notarized statement from the applicant's employing agency confirming time in service as a peace officer or federal office or agent;

(4) a certified or notarized copy of the applicant's valid state-issued driver's license;

(5) a certified copy of the applicant's military discharge (DD-214) (if applicable);

(6) a passport-sized color photograph (frontal, shoulders and face), signed with the applicant's full signature on the back of the photograph; and

(7) an attached certified check or money order in the amount listed in the agency fee schedule.

(h) The Commission may request that applicants submit a copy of the basic and advanced training curricula for equivalency evaluation and final approval.

(i) All out-of-state or federal applicants will be subject to a search of the National Decertification Database (NDD), NCIC/TCIC, and National Criminal History Databases to establish eligibility.

(j) All documents must bear original certification seals or stamps.

(k) The effective date of this section is March 1, 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 4, 2006.

TRD-200605427
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 19, 2006
For further information, please call: (512) 936-7717

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.33

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §221.33, concerning Standardized Field Sobriety Testing (S.F.S.T.) Instructor Proficiency. This new section would establish the requirements for Standardized Field Sobriety Testing (S.F.S.T.) Instructor Proficiency.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be

no fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section will be in effect, there will be a positive benefit to the public by allowing individuals with training and experience that meets or exceeds the minimum standards established by the Commission, to receive this proficiency certificate.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The new section as proposed is in compliance with Texas Occupations Code, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.33. Standardized Field Sobriety Testing (S.F.S.T.) Instructor Proficiency.

(a) To instruct Standardized Field Sobriety Testing (S.F.S.T.) a person must be certified as a S.F.S.T. Instructor. To qualify for a S.F.S.T. instructor proficiency certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of the National Highway Transportation Safety Administration (NHTSA) S.F.S.T. Practitioner course;

(2) at least three years' experience as a S.F.S.T. practitioner;

(3) current instructor license or certificate issued by the commission;

(4) successful completion of the commission approved S.F.S.T. Instructor Course or Drug Recognition Expert (DRE) Instructor Course;

(5) completion of a S.F.S.T. Instructor Update Course or DRE Update Course within the last two (2) years;

(6) demonstrated proficiency in administration of S.F.S.T. before a certified S.F.S.T. Instructor or NHTSA representative; and

(7) submit a completed application, in the format currently prescribed by the commission, and any required fee.

(b) An S.F.S.T. Instructor proficiency certificate will be valid for two (2) years from date of issue. After that time period, the applicant must re-qualify.

(c) The effective date of this section is February 1, 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 4, 2006.

TRD-200605428

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 19, 2006

For further information, please call: (512) 936-7717

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) proposes the repeal of Chapter 809, §§809.1, 809.2, 809.4, 809.5, 809.11 - 809.20, 809.41 - 809.44, 809.46 - 809.48, 809.61 - 809.63, 809.71 - 809.79, 809.91 - 809.93, 809.101 - 809.105, 809.121 - 809.124, 809.201 - 809.205, 809.221 - 809.226, 809.228, 809.229, 809.231 - 809.233, 809.235, 809.251 - 809.253, 809.271 - 809.273, and 809.281 - 809.288, relating to Texas Workforce Commission Child Care and Development Rules, in its entirety.

The Commission proposes new Chapter 809 as follows:

Subchapter A. General Provisions, §§809.1 - 809.3

Subchapter B. General Management, §§809.11 - 809.21

Subchapter C. Eligibility for Child Care Services, §§809.41 - 809.54

Subchapter D. Parent Rights and Responsibilities, §§809.71 - 809.77

Subchapter E. Requirements to Provide Child Care, §§809.91 - 809.93

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111 - 809.117

Subchapter G. Appeal Procedures, §809.131 and §809.132

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency every four years. The Commission's Child Care and Development Rules, Chapter 809, were reviewed in 2005 with the goals of:

- removing administrative and operational procedures that have become unnecessary or are contained in other rules;

- updating terminology and definitions;

- including recent statutory requirements;

- removing obsolete provisions;

- streamlining and simplifying rule language; and

- promoting integrated support services for workforce services.

Some provisions in Chapter 809 were established when the Texas Department of Human Services-now consolidated within the Texas Health and Human Services Commission (HHSC)-administered child care services. Other provisions were written when child care operated as a separate department within the Agency. As a result, Chapter 809 contains administrative procedures that subsequently have been included in other chapters of this title.

The purpose of the repeal of Chapter 809 and proposed new Chapter 809 is to:

- simplify and clarify rule language and definitions;

- remove obsolete provisions;

- promote operational efficiencies;

- include new policy initiatives; and

- include new statutory language.

Where possible, the rules remove administrative or procedural language that may be duplicated in:

- other chapters of this title;

- the Agency-Local Workforce Development Board (Board) Agreements;

- the Financial Manual for Grants and Contracts; and

- other procedural or administrative documents.

Repealed Chapter 809 contains 13 subchapters and 75 sections. New Chapter 809 reorganizes, consolidates, and streamlines the child care rules to 7 subchapters and 46 sections. The consolidation and reorganization of the child care rules is designed to create subchapters based on the five primary parties involved in the subsidized child care system:

1. The Commission, as the lead agency for the federal Child Care and Development Fund (CCDF)

2. The Local Workforce Development Boards and child care contractors that administer and manage the system

3. The children who are receiving child care services

4. The parents who are eligible for child care services

5. The child care providers who receive the child care subsidies

The Commission has retained many of the provisions in the repealed rules. However, in many cases, the provisions have been consolidated into different subchapters. For example, the repealed rules have three separate subchapters relating to the eligibility requirements for child care services. The new rules retain many of these provisions, however, they are consolidated into one subchapter related to the eligibility for child care. Similarly, the repealed rules have two separate subchapters relating to the requirements for child care providers; the new rules consolidate the requirements into a single subchapter.

Because of the reorganization of the child care rules, these changes are better accomplished by the repeal of the current rules and adoption of new rules.

Figure: 40 TAC Chapter 809-Preamble provides a summary of the proposed rule changes.

Figure: 40 TAC Chapter 809--Preamble

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes new Subchapter A, General Provisions, as follows:

Subchapter A contains the general provisions of the Child Care Services rules, which include the short title and purpose; definitions of terms used throughout Chapter 809; and the provisions related to requesting a waiver of the child care rules.

§809.1. Short Title and Purpose

Section 809.1(a) states that the short title of this chapter may be cited as the "Child Care Rules." Repealed Chapter 809 provides the short title as the "Child Care and Development Rules." The Commission removes the words "and Development" from the title of the rules to emphasize that these rules govern the use of any Commission funds used for child care, not simply the child care funds from CCDF.

Section 809.1(b) states that the purpose of the rules is to interpret and implement the requirements of state and federal statutes and regulations governing Commission-funded child care services, including quality improvement activities. This purpose remains the same as the purpose stated in repealed Chapter 809.

Section 809.1(b) also states that the Commission funds governed by the rules include CCDF funds allocated to local workforce development areas (workforce areas) through the allocation formula described in §800.58 of this title. Additionally, the child care rules govern the use of private donated funds; public transferred funds; and public certified expenditures that are used as state match for CCDF federal matching funds. The rules also govern the use of CCDF funds used for child care for children receiving protective services. In addition, these rules govern the use of other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title.

Section 809.1(b) specifically lists the funds governed by this chapter to emphasize that the intent of the child care rules is to govern the use of any Commission-funded child care, including donated funds and certified expenditures used as state match for federal CCDF matching funds, as well as funds allocated by the Commission, such as Workforce Investment Act funds or other funds that may become available to the Commission and allocated to the workforce areas.

Finally, §809.1(c) provides that the rules contained in this chapter shall apply to the Commission, Boards, their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

The new rules do not include provisions contained in repealed Subchapter A relating to the application of the rules in a workforce area in which there is no certified Board. These provisions were included in the rules when child care services were transferred from the Texas Department of Human Services (now the Texas Health and Human Services Commission) and are no longer necessary because each workforce area currently has, and is expected to maintain, a certified Board.

Additionally, the provisions in repealed Subchapter A relating to the Train Our Teachers (TOT) Award are not retained as the program is no longer funded by the Commission.

Texas Labor Code §302.006 directs that the TOT program is a permissible rather than a required program of the Commission.

The Commission no longer funds TOT in order to maximize the amount of funds available for direct child care services.

§809.2. Definitions

Section 809.2 sets forth the definitions for terms used throughout new Chapter 809. It incorporates certain definitions found in other subchapters of repealed Chapter 809; certain definitions found in the CCDF State Plan; and new terms and definitions that are used throughout Chapter 809.

Attending a job training or educational program

The CCDF regulations at 45 C.F.R. §98.16(f)(3) require that the CCDF State Plan set forth how the state defines "attending" in regard to an individual's attendance in a job training or educational program. The CCDF State Plan states that an individual is "attending a job training or educational program" if the individual:

- is considered by the program to be officially enrolled in the job training or educational program;

- meets all attendance requirements established by the program; and

- is making progress toward successful completion of the program as determined by the Board.

Therefore, §809.2(1) includes the definition of "attending a job training or educational program," consistent with the CCDF State Plan.

Child

Section 809.2(2) defines a "child" as an individual who meets the general eligibility requirements in this subchapter for receiving child care. This definition is not changed from the repealed definition, except that the repealed definition contains the requirement that the child must reside with the parents. This requirement is set forth in new Subchapter C related to the General Eligibility for Child Care.

Child care contractor

Section 809.2(3) defines "child care contractor" as an entity or entities under contract with the Board to manage child care services. The term is retained from repealed Chapter 809, however, it is now defined. By defining "child care contractor," the Commission intends to include one or more entities that may be contracted by the Board to manage one or more functions related to the delivery of child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

Child care services

Section 809.2(4) defines "child care services" as child care subsidies and quality improvement activities funded by the Commission. This definition is designed to incorporate child care subsidies and reimbursements paid to providers on behalf of eligible parents for direct child care for eligible children, as well as eligible child care quality improvement activities funded by the Commission. The intent is to provide in rule a general term that may be applied to both direct child care subsidies and quality activities that a parent or provider may receive.

Child care subsidies

Section 809.2(5) defines "child care subsidies" as Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child. The Commission's intent is to distinguish in rule language, when necessary, the difference between Commission-funded child care services for direct child care and Commission-funded child care services for quality improvement activities.

Child with disabilities

Section 809.2(6) defines a "child with disabilities" as a child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered to be incapable of performing the routine activities of daily living if the child requires assistance in performing tasks (major life activities) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking, learning, talking, seeing, hearing, breathing; and working.

The new definition, especially as it relates to activities of daily living is based on the definition of "major life activities" found in the U.S. Department of Education regulations at 34 C.F.R. §104.3(j).

Educational program

CCDF regulations at 45 C.F.R. §98.16(f)(4) require the state to provide in the CCDF State Plan how the state defines a "job training and educational program" for the purposes of determining eligibility for a parent who is attending a job training or educational program. The Commission defines the term "educational program" separately from the term "job training program" in order to allow for the provision of time limits for parents participating in educational programs as set forth in §809.41, A Child's General Eligibility for Child Care Services, which will not be applied to parents attending job training programs.

The definition of an "educational program" is based on the definition provided in the CCDF State Plan. Section 809.2(7) defines "educational program" as a program that leads to:

- a high school diploma;

- a General Educational Development (GED) credential; or

- a postsecondary degree from an institution of higher education.

Family

For purposes of determining family size and family income in order to determine a parent's eligibility for child care services and to assess the parent share of cost, §809.2(8) defines the term "family" as the unit composed of a child eligible to receive child care services, the parents of that child, and household dependents. This definition of a "family" is identical to the definition in the repealed rules.

Household dependent

Section 809.2(9) defines the term "household dependent" as an individual living in the household who is one of the following:

- an adult considered as a dependent of the parent for income tax purposes;

- a child of a teen parent; or

- a child or other minor living in the household who is the responsibility of the parents.

Although similar to the repealed definition, the new definition clarifies that the adult must be a dependent of the parent.

Improper payments

Section 809.2(10) defines "improper payments" as payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts. This definition is consistent with the definition provided in the CCDF State Plan.

Job training program

CCDF regulations at 45 C.F.R. §98.16(f)(4) require the state to provide in the CCDF State Plan how the state defines a "job training program." Therefore, the Commission bases the definition of a "job training program" on the definition provided in the current CCDF State Plan. Section 809.2(11) defines a "job training program" as a program that provides training or instruction leading to:

- basic literacy;

- English proficiency;

- an occupational or professional certification or license; or

- the acquisition of technical skills, knowledge, and abilities specific to an occupation.

Listed family home

Section 809.2(12) defines a "listed family home" as an unregulated family home that is listed with, but not regulated by, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c). This term is used, but not specifically defined, in repealed Chapter 809. The Commission includes the definition of such homes because the new rules contain the provision that Boards may choose to include a listed family home as an eligible provider (as long as the Board ensures health and safety requirements are met).

Military deployment

Section 809.2(13) defines "military deployment," as it relates to the continuity of care for children with parents in the military, as the temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents of a child enrolled in child care. This includes deployed parent(s) in the regular military, military reserves, or National Guard.

This definition is modified from the repealed rules to include any military deployment away from the parent's military installation or place of residence, not just combat deployment as provided in the repealed rules. The intent is to encompass parents in the military who have been assigned combat deployment as well as to parents who have military assignments to assist in national emergencies.

Parent

Section 809.2(14) defines a "parent" as an individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing *in loco parentis* (in place of the parent). Unless otherwise indicated, the term applies to a single parent or both parents, and the term parent and parents are used interchangeably.

The definition is similar to the repealed definition of a parent except for the addition of the phrase "or person standing *in loco parentis*." The repealed definition of a parent requires legal guardianship, which is determined though a court order and may involve the termination of parental rights of the natural parent. The Commission recognizes that situations exist in which the child's natural parent (or adoptive parent or stepparent) may become involuntarily separated from the child, making it necessary for the child to be cared for by an individual who is not the legal guardian. For example, the parent may be in the active duty military stationed away from the home and have placed the child under the temporary care of a relative. The parent also may be incarcerated and place the child under the temporary care of a relative. In these cases, the individuals caring for the child may require child care in order to work. However, the parent has not terminated, and does not intend to terminate, parental rights and the relative does not intend to become the child's legal guardian.

Therefore, the Commission includes the phrase "or person standing *in loco parentis*" in order to allow individuals who are caring for a child while the child's parent is absent to meet the definition of a parent for child care eligibility purposes. CCDF regulations at 45 C.F.R. §98.16(f)(9) require states to define "*in loco parentis*" in the CCDF State Plan and the Commission intends to amend the CCDF State Plan to do so. This will provide the Commission with flexibility in modifying and expanding the specific cases in which a person who is standing in for the parent may meet the definition of a parent and be eligible for child care services.

In developing the definition of *in loco parentis* for the CCDF State Plan, the Commission intends to focus on situations similar to those mentioned previously related to parents in military deployment and incarcerated parents. Other situations include cases in which a state or federal child welfare or child protective entity is involved and recommends that placing the child with another adult is in the best interest of the child. However, the Commission is aware that there are instances in which the parent leaves the child with a relative or friend for an indeterminate amount of time. The Commission is mindful that this may be considered child abandonment, which is better addressed through Child Protective Services. The definition of *in loco parentis* must balance the immediate needs of the caregiver with what is in the long-term best interest of the child.

Protective services

CCDF regulations at 45 C.F.R. §98.16(f)(7) require the state to provide in the CCDF State Plan how the state defines the term "protective services" as it relates to the provision of child care. The CCDF State Plan defines "protective services" as services provided when:

- the child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without the intervention of Child Protective Services (CPS);

- the child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

- the child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

Therefore, §809.2(15) defines "protective services" as set forth in the CCDF State Plan.

Provider

Section 809.2(16) defines the term "provider" as a:

- regulated child care provider;

- relative child care provider; or

- at the Board's option, a listed family home subject to health and safety requirements.

The general term "provider" is used in the new rules to signify the provisions that will apply to every eligible child care provider type. The repealed rules stipulate that a "provider" must have a "Provider Agreement" with the Board (or the Board's child care contractor). The repealed rules also include a definition of a "self-arranged provider." Self-arranged child care (SACC) providers do not require a Provider Agreement. Therefore, the Commission has removed from the rules the distinction between providers with an agreement and SACC providers.

However, the new rules retain the distinction between regulated child care providers and unregulated relative child care providers. The Commission retains this distinction in order to emphasize that parents have the choice of provider types allowed under the CCDF regulations, including eligible relatives.

Regulated child care provider

Section 809.2(17) defines a "regulated child care provider" as an entity that is:

- licensed by DFPS;

- registered with DFPS;

- licensed by the Texas Department of State Health Services as a youth day camp; or

- operated and monitored by the United States military services.

This definition sets forth the same minimum requirements for providers as in repealed Chapter 809.

Relative child care provider

Section 809.2(18) defines a "relative child care provider" as an individual who does not reside in the same household as the eligible child, is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

- the child's grandparent;

- the child's great-grandparent;

- the child's aunt;

- the child's uncle; or

- the child's sibling.

The new list of eligible relative child care providers is based on the list of eligible providers in federal regulations at 45 C.F.R. §98.2. Federal regulations require that the child's sibling must not reside in the same household as the eligible child. However, 45 C.F.R. §98.30(e)(1)(iv) also allows states to establish limitations on child care services provided in the child's own home. Therefore, the rules limit child care services provided in the child's own home to relatives who do not reside with the eligible child. The Commission intends that child care funds be maximized to the greatest extent possible in order to serve parents who require child care in order to work or attend a job training or educational program. The Commission contends that a relative who resides with the child should not be eligible to receive a subsidy in order to care for the child, because the relative is available in the child's home to care for the child while the parent is working or attending a job training or educational program. The Commission believes that the limited resources to fund child care must not be used to subsidize individuals who are in the child's household and are available to care for the child. Rather, the funds should be used to provide child care services to parents who require child care and do not have access to care.

Residing with

The CCDF regulations at 45 C.F.R. §98.16(f)(5) require the state to provide in the CCDF State Plan how the state defines "residing with" as it relates to the federal requirement that the child is residing with an eligible parent. The CCDF State Plan states that the child is "residing with" the parent if the child's primary place of residence is the same as the parent's primary place of residence. Section 809.2(19) defines the term "residing with" as set forth in the CCDF State Plan of Texas.

Teen parent

Section 809.2(20) defines a "teen parent" as an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child. This definition is the same as in the repealed rules.

Working

The CCDF regulations at 45 C.F.R. §98.16(f)(6) require the state to provide in the CCDF State Plan how the state defines "working" as it relates to the federal requirement that the parent of the child is "working" (or attending a job training or educational program). The CCDF State Plan defines "working" as:

- an activity for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

- an activity to assist individuals in obtaining employment including on-the-job training, job creation through wage subsidies, work experience, and community service programs.

Section 809.2(21) defines "working" as set forth in the CCDF State Plan. The new definition includes job search activities. Additionally, §809.41(d) establishes certain limitations on the provision of child care during job search activities.

Finally, the definitions of "Board" and "TANF" are not included in the new rules because each is defined in Chapter 800.2 of this title; therefore, it is duplicative to redefine the terms in this chapter.

§809.3. Waiver Request

Section 809.3 retains the provision in repealed Chapter 809 allowing the Commission to waive child care rules upon request from a person directly affected by the rule. The criteria for granting the waiver request also remain the same. The Commission may grant the waiver if the Commission determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission proposes new Subchapter B, General Management, as follows:

Subchapter B contains the general management provisions required for a Board to plan, manage, and administer child care services. Similar to repealed Subchapter B, new Subchapter B contains rule provisions related to Texas Workforce Development Board Plans (Board plans), policies, coordination of services, consumer education, quality improvement activities, and the rules for securing local match for CCDF. Subchapter B also combines many of the provisions related to Board management of child care services found throughout repealed Chapter 809. These provisions include the maintenance of a waiting list

for child care services, assessing the parent share of cost, and provider reimbursements.

§809.11. Board Responsibilities

Section 809.11 identifies the specific responsibilities of a Board in administering child care services.

Section 809.11(a) states that a Board is responsible for the administration of child care. The Commission retains this provision from repealed Chapter 809, but removes the identification of a Board as "certified" and the phrase "with a local plan approved by the Governor" as this language is included in the definition of a Board in Chapter 800 of this title.

Section 809.11(b) requires a Board to ensure that access to child care services is available through all Texas Workforce Centers within a workforce area. This provision and purpose is retained from repealed Chapter 809 with an additional clarification that a Board shall ensure access to child care services through Texas Workforce Centers.

Section 809.11(c) identifies child care services as support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title. This provision and purpose is retained from repealed Chapter 809, however, the Commission adds language stating that child care is a "support service" for employment and workforce services. The Commission's intent is to emphasize that child care is not a workforce and job training service in itself, but is an important support for individuals participating in those services.

Section 809.11(d) requires a Board to give the Commission, upon request, access to child care administration records and submit any related information for review and monitoring pursuant to Commission rules and policies. This provision and purpose is retained from repealed Chapter 809 without change.

§809.12. Board Plan for Child Care Services

Section 809.12 identifies the requirements and goals of a Board's plan for child care services. In repealed Chapter 809, this section is titled "Board Planning and Policies for Child Care Services" and includes subsections related to Board planning, Board policies, and Board coordination activities with other child care and early development programs. The new rules maintain the same purpose but delineate these provisions into three sections.

Section 809.12(a) states that a Board shall develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services. These provisions are the same as in the repealed rules.

Section 809.12(b) provides the goal of the Board plan. The goal, as in the repealed rule, is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.

Section 809.12(c) requires Boards to design and manage the Board plan to maximize the delivery and availability of quality child care services to assist families who are seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending job training or educational programs. This provision is unchanged from the repealed rules.

§809.13. Board Policies for Child Care Services

Section 809.13 relates to a Board's policies for child care services.

Section 809.13(a) requires Boards to develop, adopt, and modify policies for the design and management of the delivery of child care services in accordance with the provisions in Chapter 801 of this title. Section 801.51 requires that Boards adopt policies in a public process in accordance with the requirements of the Open Meetings Act (Texas Government Code, Chapter 551). This requirement is retained from repealed Chapter 809. The Commission emphasizes the importance of public input and access to Board policies, especially as they relate to the Board's eligibility requirements, parent reporting and documentation requirements, and the requirements for child care providers.

Section 809.13(b) requires a Board to maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request. The purpose of this provision is unchanged from the repealed rules.

Section 809.13(c) requires a Board to submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board. This language is identical to the language in the repealed rules. The intent of this provision is to allow the Commission to maintain a complete record of Board child care policies in order to research current practices of the Boards and to include current Board policies, as necessary, in applicable federal or state reports. It is not the intent of the Commission to approve Board policies.

Section 809.13(d) lists required Board policies and the specific child care rule requiring the policy. The policies relate to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);

(2) the maintenance of a waiting list as described in §809.18(b);

(3) assessing a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay parent's share of cost;

(4) the maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers who offer transportation;

(5) family income limits as described in Subchapter C (related to Eligibility for Child Care Services);

(6) the provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);

(7) minimum activity requirements for parents as described in §809.48, §809.50, and §809.51;

(8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);

(9) the frequency of eligibility redetermination as described in §809.42(b)(2);

(10) Board priority groups as described in §809.43(a);

(11) the transfer of a child from one provider to another as described in §809.71(b)(2);

(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;

(13) attendance standards and procedures as provided in §809.92(b)(3), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);

(14) providers charging the difference between their published rates and the Board's reimbursement rate as provided in §809.92(d); and

(15) procedures for investigating fraud as provided in §809.111.

Required Board policies are found throughout the repealed rules with no single place in rule that itemizes the required policies. New §809.13(d) provides a complete list of required child care policies cited throughout the chapter.

§809.14. Coordination of Child Care Services

Section 809.14 relates to the coordination of child care services in order to identify entities that a Board must coordinate with when developing its Board plan and policies to design and manage child care services.

Section 809.14(a) requires a Board to coordinate with federal, state, and local child care and early development programs and representatives of local governments in developing its Board plan and policies for the design and management of the delivery of child care services, and to maintain written documentation of coordination efforts. This provision is unchanged from the repealed rules.

Section 809.14(b) requires that a Board shall coordinate with school districts and Head Start and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care services are available to meet the needs of low-income parents who are working or attending a job training or educational program.

The Commission includes this provision in order to implement the intent of the 78th Texas Legislature, Regular Session (2003) enacted in Senate Bill (SB) 76 and by the 79th Texas Legislature, Regular Session (2005) in SB 23. These two actions of the Legislature created, then subsequently amended, §29.158 of the Texas Education Code to require coordination of services among the Commission's subsidized child care system and school districts and local Head Start or Early Head Start programs.

Although it is a new provision in rule, it is not a new requirement placed on Boards. In December 2003, the Commission issued a Workforce Development (WD) Letter requiring Boards to coordinate with school districts and local Head Start or Early Head Start programs, to the greatest extent practicable, to provide full-day and full-year child care services to meet the needs of low-income working parents.

§809.15. Promoting Consumer Education

Section 809.15 relates to Promoting Consumer Education and provides the consumer education information that Boards are required to provide parents pursuant to federal CCDF regulations at 45 C.F.R. §98.33. This section retains the provisions from the repealed rules without substantive changes.

Section 809.15(a) requires a Board to promote informed child care choices by providing consumer education information to parents who are eligible for child care services; parents who are placed on a Board's waiting list; parents who are no longer eligible for child care services; and applicants who are not eligible for child care services.

Section 809.15(b) requires that the consumer education information include-at a minimum-information about the Texas Information and Referral Network/2-1-1 Texas (2-1-1 Texas); the Web site and telephone number of DFPS to allow parents to obtain information on health and safety requirements; a description of the full range of eligible child care providers; and a description of programs available in the workforce area relating to school readiness and quality rating systems.

Section 809.15(c) requires Boards to cooperate with HHSC to provide 2-1-1 Texas with information on child care services.

§809.16. Quality Improvement Activities

Section 809.16 relates to allowable quality improvement activities. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.16(a) provides that nondirect care quality improvement activities shall be used only for collaborative reading initiatives; school readiness, early learning, and literacy; or local-level support to promote child care consumer education provided by 2-1-1 Texas. The language also stipulates that this section applies to CCDF funds allocated by the Commission pursuant to §800.58 of this title, and includes local public transferred funds and local private donated funds.

Section 809.16(b) states that allowable quality activities may include professional development and training for child care providers, or the purchase of curriculum and curriculum-related support resources for child care providers.

Section 809.16(c) states that allowable quality activities may be designed to meet the needs of children in any age group eligible for child care services, including children with disabilities.

Section 809.16(d) states that in funding quality improvement activities, a Board may give priority to child care facilities that are participating in the integrated school readiness models developed by the State Center for Early Childhood Development (State Center); implementing components of school readiness curricula as approved by the State Center; or participating in or voluntarily pursuing participation in Texas Rising Star Provider certification.

Section 809.16(e) states that expenditures certified by a public entity as provided may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

§809.17. Leveraging Local Resources

Section 809.17 relates to leveraging local resources to match federal funds. The section identifies the types of funds that are acceptable as match and provides instructions on certifying, monitoring, and submitting matching funds to the Commission. The provisions in this section-with the following exception-have not changed substantially from the repealed rules.

The Commission does not include language from the repealed rules that requires a Board to secure private and public funds. The Commission encourages rather than requires Boards to secure local match in order for Boards to receive all available federal matching funds. Boards are not required to secure local funds in order to receive certain child care funds. However, a certain amount of federal matching funds allocated to a Board is available to the Board only if it secures the necessary local matching funds; otherwise, the funds will be deobligated from

the Board and reallocated to Boards that are able to secure the necessary matching funds.

Section 809.17(a) encourages Boards to secure local public and private funds for the purpose of receiving matching federal funds. Subsection (a) also encourages Boards to secure additional local funds in excess of the amount required to match federal funds allocated to the Boards in order to maximize their potential to receive additional federal funds should they become available. Finally, this subsection states that a Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

Section 809.17(b) relates to the types of funds the Commission accepts as local match. Section 809.17(b)(1) states that the Commission accepts as local match funds from a private entity that are donated without restrictions that require their use for a specific individual, organization, facility, or institution; or an activity not included in the CCDF State Plan or allowed under this new chapter. Additionally, the funds cannot revert back to the donor's facility or use; cannot be used to match other federal funds; and must be certified by both the donor and the Commission as meeting these proposed requirements. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53(e)(2).

Section 809.17(b)(2) relates to the Commission's acceptance of funds from a public entity that are transferred without restrictions requiring their use for an activity not included in the CCDF State Plan or allowed under this chapter. Additionally, the funds cannot be used to match other federal funds, and cannot be federal funds unless the funds are authorized by federal law to be used to match other federal funds. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53.

Section 809.17(b)(3) relates to the Commission's acceptance of funds by a public entity that certifies that the expenditures are for an activity included in the CCDF State Plan or allowed under this chapter; are not used to match other federal funds; and are not federal funds unless the funds are authorized by federal law to be used to match other federal funds. These provisions mirror the federal match requirements for CCDF in 45 C.F.R. §98.53(e)(1).

Section 809.17(c) states that a Board must submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

Section 809.17(d) relates to completing the local match process. This subsection requires a Board to ensure that private donations and public transfers of funds are submitted and paid to the Commission and that public certifications are considered to be complete when a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible child care services.

Section 809.17(e) states that a Board shall monitor the funds secured for match.

§809.18. Maintenance of a Waiting List

Section 809.18 relates to the maintenance of a waiting list to provide child care services, and the requirement that policies be established to maintain the list.

Section 809.18(a) states that a Board shall ensure that a list of parents waiting for child care services, because of lack of funding or lack of providers, is maintained and available to the Commission upon request. This provision is retained from the repealed rules except for the removal of "self-arranged providers" as a category of providers. In addition, the requirement to specify the reason for being on the waiting list is not included because the Commission contends that it is unnecessary.

Section 809.18(b) requires that Boards establish a policy for the maintenance of a waiting list. Section 809.18(b)(1) states that a Board shall establish a policy for the maintenance of a waiting list that includes the process for determining that the parent is potentially eligible for child care services before placing the parents on the waiting list. The Commission believes that it is important to ensure that parents have a reasonable expectation that they could be eligible for child care services if funding becomes available. The Commission contends that placing parents on the Board's waiting list without conducting a basic, but informal, review of the potential eligibility of the parent may lead to a false expectation that if the parent is placed on the waiting list, then the parent is eligible for child care services.

The process for reviewing the potential eligibility of a parent prior to placing the parent on the waiting list is to be determined by the Board. The Commission does not require that the eligibility screening include verifying or documenting eligibility. The Board's screening process may simply require the parent to provide an estimate of family income and family size, the age of the child needing care, and the parent's work, training, or educational situation. Additionally, the Commission encourages Boards to partner with their local 2-1-1 Texas provider to coordinate the screening of potential eligibility for child care services.

Section 809.18(b)(2) requires that a Board establish a policy for the maintenance of a waiting list to identify the frequency with which the parent information is updated and maintained on the waiting list. The Commission contends that a Board should develop such a policy in order to inform parents that information regarding their interest in child care and assessing for basic eligibility may be required to be updated on a regular basis.

§809.19. Assessing the Parent Share of Cost

Section 809.19 relates to assessing the parent share of cost to identify the criteria that a Board must use when assessing, reducing, and providing exemptions from the parent share of cost. These provisions are largely retained from the repealed rules.

Section 809.19(a)(1) states that for CCDF funds allocated by the Commission pursuant to its allocation rules in §800.58 of this title, including local public transferred funds and local private donated funds, a Board shall set a parent share of cost policy that results in a parent share of cost being assessed to all parents, except for the exemptions set out in paragraph (2) of this subsection. Additionally, the rules state that the parent share of cost should be a sliding fee scale based on the family's size and gross monthly income, and it may also consider the number of children in care. However, the parent share of cost cannot exceed the cost of care.

These provisions are largely retained from the repealed rules. However, the Commission has inserted the words "sliding fee scale," which were omitted from the repealed rules. The Commission adds this provision in the parent share of cost in order to align Commission rules with federal Child Care and Development Block Grant (CCDBG) law and federal CCDF regulations.

Federal child care law at 42 U.S.C. 9858c(c)(5) requires states to "establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services" under CCDBG. The CCDBG law, 42 U.S.C. 9858n(12), defines a sliding fee scale as "a system of cost sharing by a fam-

ily based on income and size of the family." This requirement is implemented in CCDF regulations at 45 C.F.R. §98.42(b), which states that the "sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate."

The repealed Commission rules include the federal requirement that a Board's parent share of cost policies be based on family income and family size as well as allow consideration for the number of children in care. The rules, however, do not specify a sliding fee scale as stipulated in the federal CCDBG law and CCDF regulations. Most Boards use a relatively flat percentage of family income-typically nine percent-to determine the parent share of cost for one child. Most Boards increase this percentage to 11% of the family income when two or more children are in care. Furthermore, most Boards do not include family size as a factor unless the family size is seven members or more.

The Commission acknowledges that the Boards' parent share of cost policies have been in the approved CCDF State Plan for several years. Therefore, the Commission is not requiring Boards to change their parent share of cost policies as a result of this rule change. The rule change is designed to align the language in Commission rules with the federal regulatory language.

However, the Commission is concerned that improvements be made to the parent share of cost policies. The Commission contends that the intent of requiring a sliding fee scale is to ensure that families at very low incomes pay a lower percentage of their income than families at the higher end of the income eligibility limit. Additionally, the Commission contends that increasing the share of cost for families at the higher income levels will better prepare these families to pay for child care if they experience wage increases that would make them ineligible for child care services.

Basing the parent share of cost on a relatively flat percentage of income, and starting that percentage at 11% for two children in care, may be particularly burdensome for families transitioning off Choices. For example, because Commission rules exempt Choices families from paying a parent share of cost, a former Choices family will transition from paying nothing for child care while participating in Choices to paying up to 11% of the family income once the family is no longer eligible for Choices child care. As a result, many former Choices parents may forego Transitional child care services and may become more at risk of returning to TANF.

However, the Commission understands that requiring Boards to adopt more gradual sliding fee schedules could affect the Commission's performance measures related to the average cost per child by potentially decreasing the total amount of parent share of cost that a family at low income would pay. Additionally, the change would require substantial changes to the child care automation systems. Therefore, the Commission has determined that further analysis of the impact of such a change in rule should be conducted before Boards are required to modify their parent share of cost policies to align more closely with the sliding fee scale based on family income and family size requirements.

The Commission will work closely with Boards to determine and analyze the potential impact of using a gradual sliding fee schedule, specifically as it affects:

- family resources and self-sufficiency;

- the Commission's legislative cost per child performance measures; and

- the Commission's child care automation systems.

The Commission notes, however, that new §809.19(b) retains the provision in the repealed rules that child care funded through non-CCDF sources shall include a sliding fee scale that may be the same or different from the scale in §809.19(a).

Section 809.19(a)(2) states that parents who are participating in Choices, in Food Stamp Employment and Training (FSE&T) services, or parents who have children who are receiving protective services are exempt from paying a parent share of cost.

Section 809.19(a)(3) provides that teen parents (who are not in a group that is specifically exempted from a parent share of cost) are assessed a parent share of cost. The rule also contains the provision in the repealed rules that the teen parent's share of cost is based solely on the teen parent's income. However, the proposed rules add language to state that the parent share of cost also be based on the teen's family size as defined in §809.2(8). This provision is also added to clarify that the income and family size of the parents of the teen parent are not included in assessing the teen parent's share of cost.

Section 809.19(b) provides that for child care services funded from sources other than CCDF, a Board shall set a parent share of cost policy based on a sliding fee scale. The fee may be the same as or different from the provisions contained in §809.19(a). This provision is retained from the repealed rules.

Section 809.19(c) states that a Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost. This provision is retained from the repealed rules.

Section 809.19(d) states that a Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.

Section 809.19(e) states that the Board or its child care contractor cannot waive the assessed parent share of cost under any circumstances. The rule also clarifies that this provision does not apply to parents who are exempt from being assessed a parent share of cost as described in §809.19(a)(2).

Section 809.19(f) states that if the parent share of cost based on family income and family size is calculated to be zero, the Board or its child care contractor must not charge the parent a minimum share of cost. This is a new provision in rule. However, it is not a new requirement. The policy is based on previous Commission guidance provided to the Boards through a WD letter. This language is added to clarify that although all parents should be assessed a parent share of cost based on income and family size, if that assessment is calculated to be zero because the family has no allowable documented income, then the parent should not be required to pay a minimum parent share of cost. Parents, especially teen parents and students who have no documented income, are not receiving Temporary Assistance for Needy Families or participating in Choices and, therefore, are not exempt from the parent share of cost, are most at risk of going on public assistance. The Commission contends that charging these parents a parent share of cost will place an undue hardship on the family and make the family more vulnerable to going on public assistance.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20, relating to maximum provider reimbursement rates, specifies the criteria to be used in establishing maximum reimbursement rates for child care providers. The provisions in this section are retained from the repealed rules.

Section 809.20(a) requires that Boards establish maximum reimbursement rates based on local factors, including a market rate survey provided by the Agency. The Commission retains the provision that maximum reimbursement rates should be set at a level to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

Section 809.20(b) provides that Boards shall establish graduated reimbursement rates for child care providers participating in integrated school readiness models developed by the State Center and Texas Rising Star Providers.

Section 809.20(c) provides that the minimum reimbursement rates established under §809.20(b) must be at least five percent greater than the maximum rate established for providers not meeting the requirements of §809.20(b) for the same category of care up to, but not to exceed, the provider's published rate.

Section 809.20(d) states that a Board or its child care contractor must ensure that providers who are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. In addition, a Board is required to ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the additional rate. The Commission further adds that the higher rate also may be paid in order that a provider may obtain equipment necessary for the care of a child with disabilities.

Section 809.20(e) allows a Board to determine whether to reimburse providers who offer transportation. Additionally, §809.20(f) states that the provision that the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

§809.21. Determining the Amount of the Provider Reimbursement

Section 809.21 states the actual reimbursement that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum rate or the provider's published rate, whichever is lower, less the parent share of cost assessed and adjusted when the parent share of cost is reduced; and any child care funds received by the parent from other public or private entities. These provisions are retained from the repealed rules.

Repealed Provisions Related to General Management and Board Responsibilities

The Commission removes the requirement that a Board must ensure parental choice by recruiting, training, and maintaining a sufficient number of providers to offer parents a full range of categories of care and types of providers of child care. The Commission further removes the requirement that Boards must recruit and train providers. The Commission contends that recruitment and training does not ensure parent choice. It is the Commission's intent that making consumer education information available to parents, as required in §809.15, ensures that parents have available to them the full range of provider types and child care options.

The Commission also removes the requirements related to procurement, management of finances, information management and reporting, performance standards, and timely billings as these provisions are included generally in Chapter 800, specifically in Subchapter C. Performance and Contract Management, and in the Agency-Board Agreement; therefore they are unnecessary in this chapter.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

The Commission proposes new Subchapter C, Eligibility for Child Care Services, as follows:

Subchapter C of the child care rules contains the provisions related to determining initial and continued eligibility for child care services; provisions related to general eligibility requirements, priority of services, and calculating income; and the eligibility requirements for Choices child care, TANF Applicant child care, FSE&T child care, and Transitional child care. Additionally, Subchapter C contains the child care eligibility requirements for children living at low incomes, including child care for children with disabilities and teen parents, as well as provisions related to child care for children served by special projects. Finally, the subchapter contains the continuity of care provisions related to continued eligibility for child care services.

§809.41. A Child's General Eligibility for Child Care Services

Section 809.41 relates to a child's general eligibility for child care services.

Section 809.41(a)(1) states that, except for a child receiving or needing protective services, a child may be eligible for child care services if the child is under 13 years of age or, at the option of the Board, a child with disabilities under 19 years of age.

Additionally, §809.41(a)(2) states that the child must reside with a family whose income does not exceed the income limit established by the Board, not to exceed 85 percent of the state median income for a family of the same size. The child must also reside with a parent who requires child care in order to work or attend a job training or educational program.

The general eligibility requirements in §809.41(a) are similar to the repealed provisions with additional language to clarify that the age and residency requirements for a child needing or receiving protective services are provided in §809.49. The provisions related to a child's general eligibility mirror the CCDF requirements in 45 C.F.R. §98.20.

Section 809.41(b) retains the provision from the repealed rule requiring a Board to establish policies, including time limits, for the provision of child care while the parent is attending an educational program.

Additionally, §809.41(c) provides the requirement that child care must be available to a parent for four years, if the parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

Section 809.41(c) reflects the legislative requirement contained in the Commission's general appropriations requiring that child care services must be continued for a period "not to exceed" four years, if the parent wishes to acquire an associate's degree that will prepare him or her for a job in a high-growth, high-demand occupation with an upward path. Currently, the Commission complies with this legislative requirement through Commission guidance to the Boards in a WD Letter. The legislative requirement states that child care shall continue for a period "not to ex-

ceed four years." However, that language could be interpreted to mean that Boards can place time limits of fewer than four years. The Commission contends that the legislative intent is to ensure that child care is available for working parents who are enrolled in certain associate's degree programs for a sufficient amount of time for the parents to complete the program. These programs typically require two years of full-time attendance. Therefore, in order to work and attend school, working parents may require additional time to complete the program. Section 809.41(c) clarifies the time limit as intended by the Legislature by specifically requiring that child care be available to parents enrolled in an eligible associate's degree program for four years.

The Commission notes that the proposed definition of a parent's attendance in an educational program at §809.2(1)(C) includes the stipulation that the individual is making progress toward successful completion of the program as determined by the Board. Therefore, although §809.41(c) provides that child care services shall continue for four years for parents enrolled in certain associate degree programs, a parent's continued receipt of child care services is contingent upon the parent's successful progress toward completion of the degree.

Finally, §809.41(d) sets forth the requirements for the provision of child care in order for the parent to conduct job search activities. As in §809.2(21), the definition of "working," job search is included as an allowable work activity. The Commission's Choices rules at §811.27(b) limit job search for Choices participants to four consecutive weeks and a total of six weeks in a federal fiscal year. The Commission's FSE&T rules §813.31 have a similar provision. Additionally, the proposed child care rules limit Transitional child care during job search to four weeks for former TANF recipients who are not employed at the time their temporary cash assistance expires. However, other Commission rules do not address job search time limits for other Commission-funded child care.

Therefore, §809.41(d) states that unless otherwise subject to job search limitations as stipulated in other Commission rules (specifically §811.27(b) for Choices participants and §813.31 for FSE&T participants), for child care funds allocated by the Commission pursuant to its child care allocation rules in §800.58 of this title (CCDF), a child currently receiving child care services may be eligible for continued services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment. The rules also stipulate that for child care services funded by the Commission from sources other than those specified in §800.58 of this title (non-CCDF sources), child care services during job search activities are limited to four weeks within a federal fiscal year. Establishing a job search limitation on a federal fiscal year basis is consistent with the Commission's current Choices and FSE&T rules.

§809.42. Eligibility Determination and Verification

Section 809.42 relates to eligibility determination and verification for child care services.

Section 809.42(a) states that a Board shall ensure that its child care contractor verifies eligibility for child care services prior to authorizing child care.

Section 809.42(b) requires that eligibility for child care be redetermined:

- anytime there is a change in family income or other information that could affect eligibility to receive child care; and

- with established frequency, at the Board's discretion.

Section 809.42(a) and 809.42(b), regarding the verification of eligibility prior to authorizing child care and provisions of eligibility redetermination, are similar to the repealed sections.

Section 809.42(c) requires Boards to ensure that a public entity certifying expenditures for direct child care determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child is under 13 years of age, or-at the option of the Board-be a child with disabilities under 19 years of age. The public entity should also verify that the child resides with:

- a family whose income does not exceed 85% of the state median income for a family of the same size; and

- a parent who requires child care in order to work or attend a job training or educational program.

CCDF matching fund regulations at 45 C.F.R. §98.53(c)(2) require that state expenditures used to match CCDF funds, including public certified expenditures, be for allowable services or activities that meet the goals and purposes of CCDF. Section 809.42(c) is a new requirement designed to clarify that public child care expenses that are certified as CCDF match represent expenses for child care services that meet the minimum CCDF eligibility requirements in 45 C.F.R. §98.2.

The Commission notes that public certified expenditures that represent expenditures for quality improvement activities may be for any quality improvement activity allowed by CCDF regulations in 45 C.F.R. §98.51. This provision also is included in §809.16(e) relating to Quality Improvement Activities.

§809.43. Priority for Child Care Services

Section 809.43 relates to priority for child care services. CCDF regulations at 45 C.F.R. §98.44 require states to give priority to:

- children in families with very low income; and

- children with special needs.

The priority in §809.43 reflects the above CCDF priority groups.

Section 809.43(a) states that a Board shall ensure that child care services are prioritized among three priority groups. The first priority group provided in §809.43(1) reflects the federal priority for children in families with very low incomes. Child care services are assured for children in the first priority group and includes parents eligible for:

- Choices child care;

- TANF Applicant child care;

- FSE&T child care; and

- Transitional child care.

The first priority group in §809.43(1) is similar to the first priority group in the repealed rules. The Commission specifically includes TANF Applicant child care as a first priority group to align with the continuity of care provisions. The Commission retains this continuity of care provision and, therefore, includes TANF Applicant child care as a first priority group.

Additionally, child care for parents participating in FSE&T is listed as a priority for service in Board contracts. If child care is not provided, Boards may not sanction FSE&T participants who require child care to participate in services. Therefore, the Commission

includes parents participating in FSE&T as a first priority group for child care services.

Section 809.43(2) sets forth the second priority group, which reflects the federal priority group related to serving children with special needs. The second priority group is served subject to the availability of funds and includes, in order of priority:

- children who need to receive protective services child care;

- children of a qualified veteran;

- children of a foster youth;

- children of teen parents; and

- children with disabilities.

Children who need to receive protective services are included in the second priority group under the repealed rules. The Commission adds children of teen parents and children with disabilities to the second priority group as these groups are defined in the CCDF State Plan as children with special needs. Therefore, inclusion of these children as a priority reflects the federal priorities in CCDF regulations 45 C.F.R. §98.44.

Additionally, the 79th Texas Legislature, Regular Session (2005), enacted House Bill (HB) 2604, which added §302.014 to the Texas Labor Code. The new section of the Texas Labor Code requires that veterans receive priority of service for training or assistance under a job training or employment assistance program or service, and applies to services funded in whole or in part by state funds. Additionally, the 79th Texas Legislature, Regular Session (2005), enacted SB 6, which added, among other actions, §264.121 to the Texas Family Code, which directs the Commission and Boards to prioritize and target services to meet the needs of foster youth and former foster youth.

Therefore, in order to implement HB 2604 and SB 6, the Commission adds veterans and foster youth to the second priority group for child care services.

Section 809.43(3) states that the third priority group includes any other priority adopted by the Board. This provision is the same as in the repealed rules.

Further, §809.43(b) states that a Board shall not establish a priority group based on the parent's choice of individual provider or provider type. This new provision prohibits a Board from establishing a priority group based on a provider or a type of provider. It is the Commission's intent that parents be allowed to choose the child care option that best meets their needs. Allowing Boards to establish priority for parents based on parent choice of a particular provider or provider type influences a parent's choice of providers and may unduly limit parent choice.

§809.44. Calculating Family Income §Section 809.44 relates to calculating family income for determining eligibility. The proposed list of income inclusions is intended to be income sources that are verifiable and easily documented.

Section 809.44(a) states that, unless otherwise required by federal or state law, family income for purposes of determining eligibility includes the monthly total of the following items for each member of the family (as defined in §809.2(8)):

Total gross earnings

Section 809.44(a)(1) includes as income gross earnings including wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned. This provision is similar to that in the repealed rules.

Net income from self-employment

Section 809.44(a)(2) includes as family income the net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm. Including net income from self-employment is retained from the repealed rules.

The Commission simplified the language from the repealed rules by including net income from both farm and non-farm self-employment into one provision related to self-employment. Furthermore, the Commission simplified the language by removing examples of business-related expenses that are deducted from the gross receipts from self-employment. The Commission determined that these deductions should not be specified in the rule language and may be determined by the Board. The Commission notes, however, that a Board should consider deducting business-related expenses that are allowable under tax deductions as provided by U.S. Department of Treasury Internal Revenue Service and itemized in Schedule C related to Profit or Loss From Business and Schedule F related to Profit or Loss From Farm.

Pensions, annuities, insurance, and retirement income

Section 809.44(a)(3) includes pensions, annuities, and retirement income (including Social Security retirement benefits and veteran's pensions) in the income calculation. Payments include any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance. This provision is comparable to that in the repealed rules.

Taxable capital gains, dividends, and interest

Section 809.44(a)(4) includes taxable capital gains, interest, and dividends including capital gains from the sale of property and earnings from dividends of stock holdings, and interest on savings or bonds. This is a slight modification to the repealed rules, which describe capital gains only in relation to the sale of property.

Rental income

Section 809.44(a)(5) includes rental income consisting of net income from boarders or lodgers, rental of a house, homestead, store, or other property. This provision is retained from the repealed rules.

Public assistance payments

Section 809.44(a)(6) includes public assistance payments including TANF cash assistance, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general cash assistance (such as from a county or city). Although similar to language in the repealed rules, the Commission adds language in order to specify that Social Security Disability Insurance and Supplemental Security Income are included in the income calculation.

Income from estate and trust funds

Section 809.44(a)(7), as in the repealed rules, includes income from estates, trust funds, inheritances, or royalties.

Unemployment compensation

Section 809.44(a)(8), as in the repealed rules, includes unemployment compensation payments from private or governmental unemployment insurance and strike benefits while a person is unemployed or on strike.

Workers' compensation income, death benefit payments or other disability payments

Section 809.44(a)(9), as in the repealed rules, includes income from workers' compensation payments. These payments include compensation received periodically from private or public sources for on-the-job injuries. The proposed language clarifies that worker's compensation death benefit payments are included as income.

Spousal maintenance or alimony

Section 809.44(a)(10) includes spousal maintenance or alimony including any payments made to a spouse or former spouse under a separation or divorce agreement. This provision mirrors content in the repealed rules, however, the Commission adds a brief description of the income included.

Child support

Section 809.44(a)(11), similar in content to the repealed rules, includes court-ordered or informal child support cash payments, maintenance, or allowance used for current living costs provided by a parent for a minor child. The Commission clarifies that this does not include the value of noncash or in-kind support such as diapers, baby formula, or other items for the child. The Commission contends that determining the value of these items would place an undue burden on the child care contractor and the parent.

Court settlements or judgments

Section 809.44(a)(12) includes a new provision to count court settlements or judgments as income, including awards for exemplary or punitive damages, non-economic damages, and compensation for lost wages or profits. The Commission contends that this income source meets its goal of including documented and verifiable income sources. The Commission also proposes that family income not include compensatory damages that are awarded to reimburse individuals for personal physical injury or physical sickness because these awards are typically awarded to pay for medical bills or ongoing medical expenses and are not retained by the individual as income.

As provided in the repealed rules, the Commission states in §809.44(b) that income to the family that is not included in §809.44(a) is excluded in determining the total family income.

Section 809.44(b) specifically excludes the following income sources:

Food stamps

Section 809.44(b)(1), consistent with the repealed rules, excludes food stamps from the income calculation.

Certain monetary allowances for children of Vietnam veterans

Section 809.44(b)(2), consistent with the repealed rules and federal guidelines, also excludes monthly monetary allowances for children of Vietnam veterans born with certain birth defects.

Educational scholarships, grants, and loans

Section 809.44(b)(3) excludes from the income calculation all educational scholarships, grants, and loans. The repealed rules specifically named only federal scholarships, grants, and loans (e.g., Pell Grants, Perkins Loans) as excluded.

Earned Income Tax Credit (EITC)

Section 809.44(b)(4) excludes the Earned Income Tax Credit (EITC) and the Advanced EITC. While EITC may be a large amount of income, including it as income may discourage working families from applying for the tax credit. EITC and Advanced EITC are not a required inclusion in the repealed rules, thus this provision is consistent with those rules.

Individual Development Account (IDA) withdrawals

Section 809.44(b)(5) excludes IDA withdrawals as income. IDAs are not a required inclusion in the repealed rules and excluding these payments encourages the use of IDAs, which supports asset-building for low-income families.

Tax refunds

Section 809.44(b)(6) excludes tax refunds from the income calculation as this is simply a refund of a parent's income that was overpaid in taxes. This is not a change from the repealed rules, as tax refunds are not a required inclusion.

VISTA and AmeriCorps stipends

Section 809.44(b)(7) excludes VISTA and AmeriCorps living allowances and stipends. This is consistent with Food Stamp benefits eligibility, which also excludes these allowances and stipends. The repealed rules do not require these payments to be included in the income calculation.

Noncash or in-kind benefits in lieu of wages

Section 809.44(b)(8) excludes noncash or in-kind benefits received in lieu of wages, such as reduced rent if a parent works as a part-time maintenance person for an apartment complex. Verifying and placing a value on noncash benefits increases the administrative burden on Board contractors. The repealed rules do not require this provision to be counted as income.

Foster care payments

Section 809.44(b)(9) excludes foster care payments as income. These are payments from DFPS to foster parents to reimburse the individuals for caring for foster children. DFPS disregards the income of foster parents when authorizing care for foster children. However, foster parents also may need child care for their own children. Foster care payments intended to support the foster child should not be counted as income when determining eligibility for the foster parents' own children. This is a change from the repealed rules, which include foster care payments.

Special military pay or allowances

Section 809.44(b)(10) excludes from income special military pay or allowances, which include subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger. While the repealed rules include "armed forces pay," it is not clear if this includes special military pay and allowances such as housing allowances and combat pay. This change allows for the inclusion of basic pay, but specifically excludes the special military pay and allowances.

§809.45. Choices Child Care

Section 809.45 sets forth provisions for a parent to be eligible to receive Choices child care.

Section 809.45(a) states that a parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title. The proposed eligibility for Choices child care is similar to the provisions in the repealed rule. However, the new language is intended to simplify the eligibility requirements. The repealed language includes references to the parent receiving TANF and participating in Choices. Because Choices is the employment and training program for TANF recipients, the reference to the receipt of TANF is extraneous language and has been removed.

Additionally, the repealed rules include a provision for child care for children of conditional and sanctioned families who must demonstrate cooperation prior to the resumption of TANF assistance. Because these families must continue to participate in Choices as part of their effort to demonstrate cooperation, the reference to conditional and sanctioned families is not necessary. As long as the parent is participating in Choices-regardless of the parent's TANF status-the child is eligible for Choices child care.

Section 809.45(b) states that a parent who has been approved for Choices, but is waiting to enter an approved initial component of the program, may receive up to two weeks of child care services when child care services will prevent loss of the Choices placement, and if child care is available to meet the needs of the child and parent. This provision is retained from the repealed rules.

§809.46. Temporary Assistance for Needy Families Applicant Child Care

Section 809.46 relates to a parent's eligibility for TANF Applicant child care. The provisions in this section are largely unchanged from the repealed rules. However, these provisions are located in the section entitled "Workforce Orientation Applicant Child Care" of the repealed rules. The name change is intended to clarify that this type of child care is provided to TANF applicants who, prior to TANF certification, become employed or have increased earning that would make them ineligible for TANF. The reference to Workforce Orientation for Applicants (WOA) in the repealed rules implies that the child care is for parents while they are attending the required WOA activities. However, this is not the case. TANF Applicant Child Care is intended to provide child care in order to enable TANF applicants to accept employment or increased wages and thus, avoid having to go on public assistance.

Section 809.46(a) states that a parent is eligible for TANF Applicant child care if the parent receives a referral from HHSC to attend a WOA but locates employment or has increased earnings prior to TANF certification and needs child care to accept or retain employment. Although similar to the repealed rules, new §809.46(a) removes extraneous language regarding criteria for eligibility. Subsection (a) also adds language to include individuals who not only become employed prior to TANF certification, but also have increased earnings prior to TANF certification, which would make them ineligible for TANF.

Section 809.46(b) provides that to receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA-unless the voluntary termination was for good cause connected with the parent's work. This provision is retained from the repealed rules, but modified from 30 hours to 25 hours in order to align the language with the 25 hour minimum activity requirement for Transitional and at-risk eligibility.

Section 809.46(c) states that subject to the availability of funds and the continued employment of the parent, TANF Applicant child care must be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in the provisions related to at-risk child care, §§809.50 - 809.52, whichever occurs first. This provision is the same as in the repealed rules.

Section 809.46(d) states that parents who are employed less than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. TANF Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week. This provision is modified from the repealed rules, which require a minimum of 30 hours a week. This provision is changed to align with the minimum activity hours required for at-risk child care.

Section 809.46(e) provides that, subject to the availability of funds, a parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care provided the parent is otherwise eligible under any provision contained in §§809.50 - 809.52 (related to at-risk child care). This provision is retained from the repealed rule.

§809.47. Food Stamp Employment and Training Child Care

Section 809.47, relating to a parent's eligibility for FSE&T child care, states that a parent is eligible to receive child care services if the parent is participating in FSE&T in accordance with the provisions of 7 C.F.R. Part 273, and whose case plan remains open. This provision is unchanged from the repealed rule.

§809.48. Transitional Child Care

Section 809.48 relates to a parent's eligibility for Transitional child care.

Section 809.48(a) states that a parent is eligible for Transitional child care services if the parent has been denied TANF because of increased earnings, or has been denied temporary cash assistance within 30 days because of the expiration of TANF time limits. Additionally, the parent must need child care to work or attend a job training or educational activity for a combination of at least 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

Section 809.48(a) includes a new provision that requires parents receiving Transitional child care to be engaged in work, education, or training activities for at least 25 hours per week (50 hours per week for two parents). The intent of this provision is to align the activity requirements for Transitional child care with the requirements for at-risk child care.

Section 809.48(b) allows Boards to establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for children in families at risk of becoming dependent on public assistance, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size. This provision is retained from the repealed rules.

Section 809.48(c) states that Transitional child care shall be available for a period of up to 12 months from the effective date of the TANF denial; or a period of up to 18 months from the effective date of the TANF denial in the case of a former

TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program. This provision is contained in the repealed rules; however, the Commission includes language related to the caretaker exemptions in order to reference the Texas Human Resources Code. This reference to the Texas Human Resources Code clarifies that the caretaker exemption refers to parents caring for a physically or mentally disabled child or parents caring for a child under the age of one.

Section 809.48(d) states that former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under §809.48(e), shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed. This provision is retained from the repealed rules.

Section 809.48(e) states that former TANF recipients who are engaged in a Choices activity and are denied TANF because of receipt of child support, shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board. This provision mirrors the repealed rules and reflects the requirements in Texas Human Resources Code §31.012(e).

§809.49. Child Care for Children Receiving or Needing Protective Services

Section 809.49 relates to eligibility for children needing protective services. Boards are required to ensure that determinations of eligibility for children needing protective services are performed by DFPS. Boards also must ensure that child care continues as long as authorized and funded by DFPS. These provisions are retained from the repealed rules.

Section 809.49(a) states that DFPS may authorize child care for a child under court supervision up to age 19. The provision allowing DFPS to authorize child care for a child under court supervision up to age 19 is a new provision included to align with the CCDF State Plan. Additionally, this language mirrors the language in CCDF regulations at 45 C.F.R. §98.20 regarding a child's eligibility for CCDF child care.

Section 809.49(b) ensures that requests made by DFPS for specific eligible providers are enforced for children in protective services. This provision is retained from the repealed rules.

§809.50. Child Care for Children Living at Low Incomes

Section 809.50 relates to child care services for children living at low incomes. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.50(a) states that a parent is eligible for child care services under this section if the family income does not exceed the income limit established by the Board, provided that the income limit does not exceed 85% of the state median income for a family of the same size. Further, child care must be required in order for the child's parents to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by the Board.

Section 809.50(b) allows a Board to reduce the requirement in §809.50(a) if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

Section 809.50(c) states that for purposes of meeting the activity requirements in §809.50(a), each credit hour of postsecondary education will count as three hours of education activity per week.

§809.51. Child Care for Children with Disabilities

Section 809.51 relates to eligibility for child care services for a child with disabilities. The provisions in this section are retained from the repealed rules without substantive changes.

Section 809.51(a) provides that a child with disabilities is eligible for child care services if:

- the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and

- child care is required in order for the child's parents to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

Section 809.51(b) states that a Board may allow a reduction to the requirement regarding minimum hours in §809.51(a)(2) if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

Section 809.51(c) states that for the purposes of meeting the educational requirements stipulated in §809.51(a)(2), each credit hour of postsecondary education will count as three hours of education activity per week.

§809.52. Child Care for Children of Teen Parents

Section 809.52 addresses the eligibility for child care services for children of teen parents. This section is similar to provisions for children of teen parents in the repealed rules.

Section 809.52(a) notes that a child of a teen parent may be eligible for child care if the teen parent needs child care services to complete high school or the equivalent, and the teen's family income does not exceed the income eligibility limit established by the Board. Boards may establish a higher income eligibility limit for teen parents provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

Section 809.52(b) states that the teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in 809.2(8). The repealed rules require that the teen parent include the income of the teen's parents, if the teen parent is residing with the teen's parents. However, the proposed rules in §809.19(a)(3) retain the provision in the repealed rules that the parent share of cost shall be based solely on the teen's family income and family size. The provisions in §809.52(b) align the income methodology used to determine eligibility for teen parents with the methodology for determining the parent share of cost for teen parents by removing the provision that the teen include the income of the teen's parents when determining income eligibility.

§809.53. Child Care for Children Served by Special Projects

Section 809.53 relates to eligibility for child care services for children served by special projects. The provisions in this section are similar to the repealed rules.

Section 809.53(a) states that special projects developed under federal and state statutes or regulations may add groups of children eligible to receive child care.

Section 809.53(b) provides that the eligibility criteria as stated in the statutes or regulations shall control for the special project, unless otherwise indicated by the Commission.

Section 809.53(c) states that the time limit for receiving child care for children served by special projects may be specifically prescribed by federal or state statutes or regulations according to the particular project; otherwise, the Commission may set the time limit depending on the purpose and goals of the special project and the availability of funds.

§809.54. Continuity of Care

Section 809.54 concerns continuity of care for children enrolled in child care services. The provisions in this section were modified slightly from the repealed rules.

Section 809.54(a) provides that enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under §809.54(b).

Section 809.54(b) states that except as provided by §809.76(b), relating to child care not continuing during appeal, a child should not be removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group in §809.43. This provision specifies that if child care is not to continue during the appeal process, then the continuity of care provisions in this subsection shall not apply.

Section 809.54(c) retains the current provisions related to continuity of care for children formerly receiving child protective services. The proposed rules state that in closed DFPS Child Protective Services cases (DFPS cases) in which child care is no longer funded by DFPS, the following shall apply for Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board, or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for the child care services for up to six months after the DFPS case is closed.

Section 809.54(c)(1), regarding Former DFPS Children Not Needing Protective Services Child Care, states that if the family meets income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide child care subject to the availability of funds. To receive care under §809.54(c)(2), Former DFPS Children Not Needing Protective Services Child Care, the parent must be working or attending a job training or educational program.

Section 809.54(d) provides that a Board shall ensure that no children of military parents in military deployment have a disruption of child care services or eligibility because of the military deployment.

Section 809.54(e) states that a Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

Section 809.54(f) allows Boards to encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.

Section 809.54(g) states that a Board must ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation do not lose their place on the waiting list.

Finally, §809.54(h) states that a Board must ensure that parents who do not choose to accept temporary child care to fill a position do not lose their place on the waiting list.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

The Commission proposes new Subchapter D, Parent Rights and Responsibilities, as follows:

Subchapter D contains the provisions related to parent rights and responsibilities. Specifically, the subchapter contains the rules related to parental choice, general parent rights, parent eligibility documentation and reporting requirements, parent appeal rights, and the parent responsibility agreement (PRA).

§809.71. Parent Rights

Section 809.71 provides the list of parent rights. The proposed rules require that a Board's child care contractor must provide the list of parent rights in writing. The Commission emphasizes that by providing the list of rights in writing, especially the parent's right to be informed of the reporting requirements and appeal rights, the parent is better able to meet the requirements to determine eligibility, thus avoiding the termination of child care. Other than adding the requirement that the parent be informed of parental rights in writing, the list of parental rights is similar to the list in the repealed rules.

Section 809.71 states that a Board shall ensure that the Board's child care contractor informs parents of their rights in writing.

Section 809.71(1) states that parents have the right to choose the type of child care provider that best suits their needs and to be informed of all child care options available to them including consumer education information described in the §809.15.

Section 809.71(2) states that parents have the right to visit available child care providers before making their choice of a child care option;

- receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another; and

- be informed that a provider may charge the parents the difference between the Board's reimbursement and the provider's published rate.

Section 809.71(1) - (3) have not changed substantially from repealed Chapter 809. However, the Commission provides new language in §809.71(a)(4) to include a parent's right to be informed of the Commission rules and Board policy related to providers charging the parent the difference between the Board's reimbursement rate and the provider's reimbursement rate as stipulated in §809.92. Section 809.92(c) prohibits providers who accept Commission-funded child care subsidies from charging parents who are exempt from being assessed a

parent share of cost that is the difference between the child care subsidy and the provider's published rate. For parents who are assessed a parent share of cost, the Commission rules do not prohibit providers from charging parents the difference between the child care subsidy and the provider's published rate. However, §809.92(d) allows Boards to have a policy that extends this prohibition for all parents eligible for child care services. Informing a parent of the Commission rules and Board policy will allow the parent to ask the provider about the provider's particular policy. Thus, the parent will be in a better position to make child care placement decisions for their children.

Section 809.71(5) - (8) state that a child care contractor shall inform parents of their right to:

- have representation when applying for child care services;

- receive notification of their eligibility for child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility;

- receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

- have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential.

Section 809.71(9) retains the provisions in the repealed rules related to notifying the parent that child care services will be denied, delayed, reduced, or terminated. The rules retain the provision that a parent has the right to receive written notification at least 15 days before the denial, delay, reduction, or termination of child care services.

Additionally, §809.71(9) retains the provision in the repealed rules that notification of denial, delay, reduction, or termination of child care services is not required if child care is authorized to cease immediately because either the parent is no longer participating in the Choices program; or child care is authorized to end immediately for children in protective services. The notification and effective date of such action is provided by the Choices case worker or DFPS.

Section 809.71(10) retains the following provisions from the repealed rules:

- the parent has the right to receive 30-day written notification if child care services are to be terminated to make room for a first priority group described in §809.43(a)(1) (specifically, Choice child care; TANF Applicant child care; FSE&T child care; and Transitional child care);

- written notification of denial, delay, reduction, or termination of child care services shall include information regarding other child care options for which the recipient may be eligible; and

- the notice may be provided on the earliest date on which it is practicable if the 30-day notification interferes with the ability of the Board to comply with its duties regarding the number of children served or requires the expenditure of funds in excess of the amount allocated to the Board.

Additionally, §809.71(11) and §809.71(12) retain the language in the repealed rules that the parent has the right to:

- reject an offer of child care services or voluntarily withdraw the child from child care unless the child is in protective services; and

- be informed by the Board's child care contractor of the possible consequences of rejecting or ending child care that is offered.

Section 809.71(13) adds a new requirement that parents be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73. The Commission proposes to add this requirement in order to ensure that parents are aware of the eligibility documentation and reporting requirements. By ensuring that a parent is aware of these documentation and reporting requirements, the parent will be in a better position to avoid possible adverse actions due to the failure to provide necessary documentation or the failure to report required information to the child care contractor.

Finally, §809.71(14) provides that the child care contractor inform the parent of the appeal rights as described in §809.74. This provision is retained from the repealed rules.

§809.72. Parent Eligibility Documentation Requirements

Section 809.72 relates to parent documentation requirements for determining eligibility for child care services. Section 809.72(a) retains the requirement from the repealed rules that parents provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures. Also retained is the stipulation in §809.72(b) that a parent's failure to submit eligibility documentation may result in denial or termination of child care services.

Section 809.72 has not changed from the repealed rules, except that the new section removes the reference to nonpayment for self-arranged child care claims. The reference to self-arranged providers is unnecessary because the Commission no longer distinguishes between providers with an agreement and self-arranged providers.

§809.73. Parent Reporting Requirements

Section 809.73 provides the parent reporting requirements for child care services.

Section 809.73(a) retains the repealed provisions that a parent must report to the Board's child care contractor, within 10 days of the occurrence, the following:

- changes in family income;

- changes in family size;

- changes in work, or attendance in a job training or educational program; or

- any other changes that may affect the child's eligibility or parent's share of cost for child care.

The Commission adds to the parent reporting requirements that the parent must report the receipt or the awarding of any child care funds from other public or private entities. Under the repealed rules and retained in new §809.21, child care providers are required to report the amount of other funds received by the parent for child care. Section 809.73(a)(4) also requires parents to report the receipt of such subsidies to the child care contractor. It is the intent of the Commission that the responsibility for reporting the receipt of other funds used for child care be shared by the parent and the child care provider.

Finally, the Commission removes the parent's requirement to report the loss of TANF or Supplemental Security Income assistance grants. This provision is unnecessary because a parent's public assistance payments, including TANF and Supplemental Security Income, are included as family income and a parent is

already required by §809.73(a) to report changes in family income.

Section 809.73(b) retains the repealed provision that failure to report changes may result in:

- termination of child care;

- recovery of payments by the Board, the Board's child care contractor, or the Commission; or

- fact-finding for suspected fraud.

Section 809.73(c) also retains the repealed provision that the receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

§809.74. Parent Appeal Rights

Section 809.74, related to parent appeals, contains many of the same provisions in the repealed rules. However, the section includes new language to clarify when a parent may appeal under Chapter 809 and when a parent may appeal under other chapters of Commission rules.

Section 809.74(a) states that a parent may request a hearing pursuant to Subchapter G of this chapter (relating to Appeal Procedure) if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor. The Commission clarifies that if a decision of ineligibility is made by the child care contractor, then the parent may appeal pursuant to the procedures set forth in this chapter. The Commission's intent is to ensure that child care appeals related to nonparticipation or noncompliance with other workforce services-services in which the child care contractor does not determine eligibility-are conducted pursuant to the appeals process of the particular workforce service.

Section 809.74(b) states that a parent may have an individual represent them during this process. This provision has not changed from the repealed rules.

Section 809.74(c) states that a parent of a child in protective services may not appeal pursuant to Subchapter G of this chapter, but shall follow the procedures established by DFPS. The proposed section has not changed from the repealed rules.

Section 809.74(d) states that if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices case worker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title. Similarly, §809.74(e) states that if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the FSE&T caseworker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title. As mentioned previously, the Commission's intent is to ensure that child care appeals related to nonparticipation or noncompliance with other workforce services-such as Choices or FSE&T - are conducted pursuant to the appeals process of the particular workforce service.

§809.75. Child Care during Appeal

Section 809.75 provides the requirements for the provision of child care during appeal. The provisions in this section are not substantively changed from the repealed provisions.

Section 809.75(a) states that for a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.

Section 809.75(b) provides that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced or terminated because of:

- excessive absences;

- voluntary withdrawal from child care;

- change in federal or state laws or regulations that affect the parent's eligibility;

- lack of funding because of increases in the number of enrolled children in state and Board priority groups;

- a sanctions finding against the parent participating in the Choices program;

- voluntary withdrawal of a parent from the Choices program;

- nonpayment of parent fees; or

- a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care.

Section 809.75(c) states that the cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

§809.76. Parent Responsibility Agreement

Section 809.76 contains the requirements for the PRA.

Section 809.76(a) retains the provision from the repealed rules that the parent of a child receiving child care services is required to sign a PRA as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the PRA must be reviewed at each eligibility redetermination.

Section 809.76(b)(1)(A) retains the repealed stipulation that the PRA require that each parent shall cooperate with the Office of the Attorney General of Texas (OAG) to establish paternity and enforce child support. However, the proposed rules clarify that this is required only for cases in which the child has a noncustodial parent. The Commission emphasizes that this provision of the PRA is not necessary if both parents of the child reside with the child and paternity and child support is not an issue. Additionally, the Commission includes language that allows a certain amount of flexibility in how a parent can demonstrate compliance with the paternity and child support provisions of the PRA.

The repealed rules related to the PRA do not specify when it is or is not necessary to cooperate with OAG. Some Boards interpreted the rule to require parents to open a child support case with OAG, even though paternity is acknowledged and the custodial parent is receiving child support, although the child support is not in the OAG child support system. Other Boards interpreted the rule to mean that if the custodial parent can demonstrate that a non-OAG-managed arrangement exists with the noncustodial parent for child support, then it would not be necessary for the parent to cooperate with OAG to establish or enforce that arrangement.

Additionally, parents with non-OAG-managed child support arrangements may decide that requiring the noncustodial parent to enter into a child support arrangement through OAG would jeopardize the receipt of any child support and jeopardize the current custodial arrangements. The custodial parent may forego re-

ceiving subsidized child care in order to retain child support and custody arrangements.

Section 809.76(b) clarifies that if a parent cannot produce documentation of receipt of child support, the parent will be required to open a child support case with OAG. The rule language specifically allows a parent to maintain an existing non-OAG-managed child support arrangement with the noncustodial parent, thus making it unnecessary to cooperate with OAG to enforce child support. The rule also specifies the documentation the custodial parent must produce in order to verify that paternity has been acknowledged and child support is being provided by the noncustodial parent.

Therefore, §809.76(b)(1)(A) stipulates that the PRA must require each parent to cooperate with OAG to establish paternity of the parent's children and to enforce child support. Additionally, the rules state that parents can demonstrate cooperation with the OAG by:

- providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or

- opening a child support case with OAG and providing documentation that the parent is cooperating with the OAG.

Additionally, §809.76(b)(1)(B) states that the parent may also provide documentation to the Board's child care contractor showing that the parent has an arrangement with the noncustodial parent for child support and is receiving child support on a regular basis. Such documentation must include evidence of child support payment history.

Although the Commission is not requiring parents to open a child support case with the OAG if the parent has an arrangement for child support with the noncustodial parent, the Commission intends that the Board require custodial parents to provide documented evidence that child support is being provided by the noncustodial parent.

Section 809.76(b)(2) retains the repealed provision of the PRA that each parent must not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code Chapter 481, and abstain from alcohol abuse.

Section 809.76(b)(3) also retains the repealed provision of the PRA related to school attendance. The new language clarifies that each parent must ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a General Educational Development credential, or is specifically exempted from school attendance by Texas Education Code §25.086.

Section 809.76(c) states that failure by the parent to comply with any of the provisions of the PRA shall result in sanctions as determined by the Board, up to and including terminating the family's child care services. The new section has not changed from the repealed rules.

§809.77. Exemptions from the Parent Responsibility Agreement

Section 809.77 states that notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:

- the paternity of the child cannot be established after a reasonable effort to do so;

- the child was conceived as a result of incest or rape;

- the parent of the child is a victim of domestic violence;

- adoption proceedings for the child are pending;

- the parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;

- the child may be physically or emotionally harmed by cooperation; or

- the parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

Section 809.77 includes additional exemptions from the repealed rules in order to align the child care PRA exemptions with TANF PRA exemptions in HHSC Rules, 15 TAC §372.1154(a)(4). These exemptions address situations relating to a child involved in a pending adoption proceeding, a parent working with an adoption agency to decide whether to place the child for adoption, or a child or parent who may be physically or emotionally harmed by cooperation.

Repealed Provisions Related to Parent Rights and Responsibilities Not Retained in the New Rules

The Commission removes the repealed provisions related to parent rights that involve "enrollment agreements." Enrollment agreements are between the parents of the child and the child care provider. The purpose of the enrollment agreements is to detail the agreed-upon terms between both parties. The repealed rules require parents to comply with the enrollment agreement. Under the repealed rules, a parent's failure to comply with the enrollment agreement results in having child care denied or terminated.

The Commission believes that the child care rules should be silent on enrollment agreements because these agreements are between the parents of a child and the individual child care provider. The child care provider, including a provider caring for nonsubsidized children, has the discretion to deny or terminate care in that child care facility in situations in which the parent does not comply with the agreed-upon terms.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

The Commission proposes new Subchapter E, Requirements to Provide Child Care, as follows:

The repealed rules have two subchapters devoted to requirements for child care providers, one subchapter for providers with agreements and one subchapter for self-arranged child care (SACC) providers.

The new chapter removes the distinction between providers with agreements and SACC providers. The Commission's intent is that the rules related to child care providers be applied to every eligible provider type and to not have one set of rules for providers with agreements and another set for SACC providers. Therefore, Subchapter E contains the requirements for child care providers receiving child care subsidies. This subchapter provides the minimum requirements for providers, provider responsibilities and reporting requirements, and the provisions for reimbursing providers.

§809.91. Minimum Requirements for Providers

Section 809.91(a) requires the Boards to ensure that child care subsidies are paid only to providers listed in §809.2(16). The eligible providers include:

- regulated child care providers;

- relative child care providers; and

- at the Board option, listed family homes.

As defined in §809.2(17), regulated child care providers are the same as the eligible providers with agreements and SACC providers as set forth in the repealed rules and include entities that are:

- licensed by DFPS;

- registered with DFPS;

- licensed by the Texas Department of State Health Services; or

- operated and monitored by the U.S. military services.

As defined in §809.2(18), a relative child care provider is an individual who does not reside in the same household as the eligible child, is at least 18 years of age and is, by marriage, blood relationship, or court decree, one of the following:

- the child's grandparent;

- the child's great-grandparent;

- the child's aunt;

- the child's uncle; or

- the child's sibling.

As discussed in relation to the proposed definition of a "relative child care provider" in §809.1(18), the proposed rules limit child care services provided in the child's own home to relatives who do not reside with the eligible child. The Commission contends that a relative who resides with the child should not be eligible to receive a subsidy in order to care for the child, because the relative is available in the child's home to care for the child while the parent is working or attending a job training or educational program.

Finally, the Commission includes listed family homes, as defined in §809.2(12), as eligible providers.

A listed family home is an unregulated family home that is listed with, but not regulated by, DFPS. Listed family homes are, under the repealed rules and at the Board's option, an eligible provider.

Other than prohibiting relative providers who reside with the eligible child from being eligible relative providers (as discussed previously), the Commission emphasizes that the eligible provider types have not changed under the new rules. Licensed centers and homes, registered and listed homes, as well as eligible relatives, continue to be eligible child care providers. The rules designate each of these provider types as eligible providers and the requirements in Subchapter E apply to each provider type equally.

Section 809.91(b) states that if a Board chooses to include a listed family home as an eligible provider, the Board must ensure that there are local health and safety laws or regulations in effect designed to protect the health and safety of the children being cared for in listed family homes.

The Commission retains listed family homes as an eligible provider in order to provide parents with a full range of provider types. However, CCDF regulations at 45 C.F.R. §98.41 require that providers, with the exception of eligible relative providers, meet certain health and safety requirements under state or local law. At a minimum, the local or state health and safety laws or regulations must include the prevention and control of infectious diseases (including immunizations); building and physical premises safety; and minimum health and safety training appropriate to the provider setting.

Because listed family homes are not regulated by DFPS for these health and safety requirements, these providers are eligible only if the Board ensures that there are local laws or regulations that meet the requirements of 45 C.F.R. §98.41 in place.

Section 809.91(c) states that a Board shall not place requirements on regulated providers that are higher than state licensing requirements, except as provided for in the Texas Rising Star Provider Certification. The subsection also prohibits Boards and child care contractors from placing requirements on regulated child care providers that have the effect of monitoring the providers for compliance with state child care licensing requirements.

The intent of this prohibition is to emphasize that DFPS has the statutory authority under Texas Human Resources Code, Chapter 42 to regulate and monitor child care providers for health and safety requirements, which include the health and safety requirements of the CCDF regulations at 45 C.F.R. §98.41. As long as the provider is licensed or registered by DFPS, then the provider is assumed to be meeting the health and safety requirements of state law and to be an eligible provider.

Also, the Commission removes the provisions contained in the repealed rules related to general liability insurance requirements because liability insurance requirements for the provider are the responsibility of DFPS and new §809.91(c) prohibits Boards from placing any additional requirements on providers that are related to the authority of DFPS to regulate child care providers. The Commission emphasizes that having liability insurance is an important requirement for all licensed child care providers, not just providers receiving child care subsidies. As a child care industry-wide licensing requirement, it is under the jurisdiction of DFPS and it is not the Commission's or the Boards' role to monitor for compliance or require additional insurance above the state licensing requirements.

However, §809.91(d) provides that if a Board or a Board child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or Board contractor must report such violations to the appropriate regulatory agency. This provision is retained from the repealed rules.

§809.92. Provider Responsibilities and Reporting Requirements

Section 809.92 contains provisions related to provider responsibilities and reporting requirements.

Section 809.92(a) states that a Board shall ensure that providers are given written notice of and agree to their responsibilities and requirements as stated in this subchapter before enrolling a child.

Though references to provider agreements have been removed in rule, the Commission emphasizes that it is important to require providers to agree in writing to the requirements in this subchapter prior to enrolling children. The Commission does not suggest that the written instrument referenced in §809.92(a) be named anything in particular. Boards may refer to the instrument as a

"provider agreement," a "contract," a "terms and condition of service," or other name as they see fit. However, as Boards develop the written instrument for the providers, the Commission emphasizes the requirements in §809.91(c) that Boards must not place requirements on a regulated provider that exceed state licensing requirements or have the effect of monitoring the provider for compliance with state licensing requirements.

Section 809.92(b) consolidates the responsibilities and reporting requirements for providers into one section. The provisions in the subsection are retained from other sections of the repealed rules. The Commission's intent is to simplify provider responsibilities and reporting requirements and also to clarify that these requirements apply to each provider type.

Section 809.92(b)(1) states that providers are responsible for collecting the parent share of cost as assessed under §809.19 prior to the delivery of child care services. This provision is unchanged from the requirement in the repealed rules. Section 809.92(b)(2) requires providers to collect other child care funds received by the parents described in §809.21(2). This provision is also retained from the repealed rules. Finally, §809.92(b)(3) provides the minimum attendance reporting and tracking procedures required of providers. These provisions are also retained from the repealed rules.

Under §809.92(c), providers are prohibited from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate, as determined in §809.21, to parents who are exempt from the parent share of cost assessment under §809.19(a)(2). Specifically, a provider shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate to parents who are participating in Choices and FSE&T, as well as parents who have children that are receiving protective services.

There is nothing in federal law, federal regulation, state law, or in repealed Chapter 809 that prohibits providers from charging parents the difference between the Board's reimbursement rate and the provider's published rate (if the published rate is higher than the Board's reimbursement rate). Under the repealed rules, Boards could have a policy that prohibited providers from charging parents the difference between what the general public pays and the subsidy paid by the Board to the provider. In fact, 25 of the 28 Boards currently prohibit this practice for providers who have an agreement with the Board.

The practice of providers charging parents the difference allows those child care providers whose published rates are higher than the Board's reimbursement rate to recover the cost of services provided to subsidized children. On the other hand, it also allows child care providers-including providers caring for children of parents participating in Choices or FSE&T, who are exempt from the parent share of cost-to charge parents for the unsubsidized portion of the parents' child care costs. This increases the cost of child care for low-income working families and may jeopardize the ability of working families to access affordable child care. Furthermore, the practice also limits the choice of providers that a parent may be able to afford. Additionally, there is a possibility that a Choices individual who cannot find a provider that will not charge the parent for any unsubsidized portion of the provider's rate may be eligible for a "good cause" exemption from the work requirements.

During the rule development process, the Commission considered prohibiting providers from charging *all* families the difference between the Board's reimbursement rate and the provider's published rate. However, the Commission determined that this prohibition for all families may discourage providers from accepting subsidized children, thus potentially limiting the number of providers from which a parent may choose. Therefore, to ensure that families who are exempt from a parent share of cost assessment (parents participating in Choices or FSE&T, and parents with children receiving protective services) have access to affordable child care, the rule prohibits providers that accept children in Commission-funded child care from charging these families an additional amount to make up the difference between their rates for the general public and the subsidy they receive from the Board for families who do not pay a share of the child care cost.

Additionally, §809.92(d) allows Boards to adopt a more strict policy if they so choose. Boards may adopt a policy prohibiting providers from charging all parents receiving subsidized child care services the difference between the subsidy and the provider's published rate. Even though several Boards already have a policy on what can be charged for the balance of the child care cost, Boards will need to reconsider and adopt or readopt their policies with these changes.

The Commission will monitor and evaluate the impact of this provision to determine if it causes an undue burden to be placed on child care providers or limits the choice of providers for parents.

§809.93. Provider Reimbursement

Section 809.93 sets forth the requirements for reimbursing providers. The provisions in this section are retained largely from various sections of the repealed rules.

Section 809.93(a) states that a Board must ensure that reimbursement for child care is paid to the provider only, and must occur after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered. Provisions related to the Declaration of Services Statement are contained in the repealed rules in the provisions related to SACC providers. Under new Chapter 809, this provision applies to all providers.

Section 809.93(b) provides that the Declaration of Services Statement must contain:

- name, age, and identifying information of the child;

- amount of care;

- amount of care provided in terms of units of care;

- rate of payment;

- dates services were provided;

- name and identifying information of the provider, including the location where care is provided;

- verification by the provider that the information submitted is correct; and

- additional information as required by the Boards.

Section 809.93(c) provides that an unregulated relative child care provider must not be reimbursed for more children than permitted by the minimum regulatory standards of DFPS for registered child care homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board. This provision is retained from the repealed rules.

Section 809.93(d) states that a Board must not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed. This provision is retained largely from the repealed rules relating to noncompliance with other federal or state programs. The repealed rules do not specify that this provision applies to SACC providers. The Commission retains this provision in the requirements for child care providers and clarifies that it applies to all eligible providers, including those formerly referred to as SACC providers.

Section 809.93(e) retains the provisions from the repealed rules that unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursements for child care are based on the unit of service delivered, as follows:

- a full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

- a part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

Section 809.93(f) provides that a Board or its child care contractor must ensure that providers are not paid for holding spaces open except as consistent with attendance policies established by the Boards. This provision is retained from the repealed rules.

Section 809.93(g) states that a Board or the Board's child care contractor must not pay providers:

- less, when a child enrolled full time occasionally attends for a part day; or

- more, when a child enrolled part-time occasionally attends for a full day.

This provision and purpose is retained from the repealed rules.

Lastly, §809.93(h) stipulates that providers shall not be reimbursed retroactively for new maximum reimbursement rates established by the Board or new provider published rates. This provision is retained from the repealed rules, however, the language is modified to clarify that the "new rates" refer to either new maximum reimbursement rates established by the Board or new published rates of providers.

Repealed Provisions Related to the Requirements to Provide Child Care Not Retained in the New Rules

Along with the removal of references to provider agreements and SACC providers, also removed are the provisions related to noncompliance with other state or federal programs, with the exception of the provision related to debarment from other state or federal programs in §809.93(d).

The provisions related to noncompliance in the repealed rules have been interpreted by some Boards to mean that they may bar a provider whose license has not been revoked by DFPS-but has been found to be in noncompliance with a particular licensing requirement-from accepting subsidized children. This is not the intent of the Commission. As long as the provider is a duly licensed and regulated facility that meets the definition of a regulated provider in §809.2, the provider is eligible to care for subsidized children.

The Commission contends that parent access to the compliance history of providers, as required in §809.15, allows parents to become aware of any noncompliance issues. The Commission contends that the decision to enroll the child with a licensed or regulated provider who has been found to be in noncompliance with certain DFPS standards should be made by the parent and the parent should be encouraged to review the compliance history of the provider.

SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

The Commission proposes new Subchapter F, Fraud Fact-Finding and Improper Payments, as follows:

Subchapter F contains the general fraud fact-finding provisions required for a Board to prevent fraud and to attempt to recover improper payments. The phrase "fact-finding" rather than "investigations" is used to emphasize that it is not the Commission's intent that Boards have investigative authority. The Boards' role is to research facts related to possible fraud and, if necessary, report the facts to the Commission for further investigation by the Commission. The provisions in this subchapter are retained largely from the repealed rules related to fraud investigations and corrective and adverse actions.

Additionally, Subchapter F contains the provisions related to corrective actions for parents or providers who fail to comply with Commission rules or Board policy. In general, the provisions for corrective actions are retained from the repealed rules. However, the Commission removes the language that applies these provisions to child care contractors as these provisions are included in Subchapter I, Subrecipient and Contract Service Provider Monitoring Activities. Additionally, corrective actions a Board may take against a child care contractor are included in the Agency-Board Agreement as well as the Agency's Financial Manual for Grants and Contracts.

§809.111. General Fraud Fact-Finding Procedures

Section 809.111 contains the general fraud fact-finding procedures required for a Board to prevent fraud.

Section 809.111(a) establishes authority for the Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

Section 809.111(b) requires a Board to ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area. This provision and purpose is retained from the repealed rules with the change of removing the term "investigating" and replacing it with the term "researching and fact-finding." Additionally, the reference in the repealed rules related to the referral for prosecution is removed. As mentioned previously, the Boards' role is to research facts, not to investigate and refer for prosecution.

Section 809.111(c) requires Board procedures to include provisions that ensure each case of suspected fraud is reported in writing to the Commission, including documentation of relevant facts. This provision and purpose is retained from the repealed rules without change.

Section 809.111(d) states that upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to:

- further fact-finding; or

- other corrective action as provided in this chapter or as appropriate.

This provision is largely retained from the repealed rules. However, the repealed rules allow Boards to refer the case for prosecution under the Texas Penal Code or other state or federal laws. The proposed rule removes this provision. As stated previously, the role of the Board is to research and conduct fact-finding involving suspected fraud. The Commission contends that it is not the role of the Boards to refer suspected fraud cases for prosecution. The Boards' role is to research potential fraud and report the results of the research to the Commission; the Commission's role is to determine if the case should be referred to the proper authorities for prosecution.

Section 809.111(e) requires a Board to ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted. This provision and purpose is retained from the repealed rules with the minor change of removing the term "investigation" and replacing it with the term "fact-finding."

§809.112. Suspected Fraud

Section 809.112 states that a parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

- a request for reimbursement in excess of the amount charged by the provider for the child care; or

- a claim for child care services if evidence indicates that the person may have:

- known, or should have known, that child care services were not provided as claimed;

- known, or should have known, that information provided is false or fraudulent;

- received child care services during a period in which the parent or child was not eligible for child care services;

- known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

- otherwise indicated that the person knew, or should have known, that the actions were in violation of this chapter, or state or federal statute or regulations, relating to child care services.

These provisions are retained from the repealed rules with minor clarifications.

§809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 provides the Commission, Boards, or Boards' child care contractors the ability to take certain actions if the Commission finds that a person has committed fraud. The actions include:

- temporary withholding of payments to the provider for child care services delivered;

- nonpayment of child care services delivered;

- recoupment of funds from the parent or provider; or

- any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

This provision is largely retained from the repealed rules. However, the Commission clarifies that it is the Commission's responsibility, not the Board's, to determine if a person has committed fraud.

§809.114. Failure to Comply with Commission Rules and Board Policies

Section 809.114 establishes compliance with Commission rules and Board policies. The provisions in this section are retained from the repealed rules. However, as stated earlier, the Commission removes the language that applies these provisions to child care contractors as these provisions are included in Subchapter I, Subrecipient and Contract Service Provider Monitoring Activities. Additionally, corrective actions a Board may take against a child care contractor are included in the Agency-Board Agreement as well as the Agency's Financial Manual for Grants and Contracts.

Section 809.114(a) requires the Board to ensure that parents and providers comply with Commission rules. This provision is retained from the repealed rules; however, the reference to contracts has been removed as previously explained.

Section 809.114(b) provides that the Commission, Board, or Board's child care contractor may consider failure by a provider or parent to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 (relating to Corrective Adverse Action). This provision and purpose is retained from the repealed rules with no substantive changes.

Section 809.114(c) provides that failure by a provider or parent to comply with this chapter will also be considered a breach of contract, which also may result in corrective action. This provision and purpose is retained from the repealed rules without changes.

§809.115. Corrective Adverse Actions

Section 809.115 identifies the corrective actions available if compliance with Commission rules and Board policies are not followed.

Section 809.115(a) provides that when determining appropriate corrective actions, the Board or child care contractor shall consider the following:

- The scope of the violation;

- The severity of the violations; and

- The compliance history of the person or entity.

This provision is retained from the repealed rules with minor editorial changes for clarity.

Section 809.115(b) identifies some allowable corrective actions a Board or child care contractor may take, including:

- closing intake;

- moving children to another provider selected by the parent;

- withholding provider payments or reimbursement of costs incurred;

- termination of child care services; and

- recoupment of funds.

This provision is retained from the repealed rules.

Section 809.115(c) states that when a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement (SIA) may be negotiated between the provider

and the Board or the Board's child care contractor. The SIA must contain, at a minimum, the following specific items:

- The basis for the SIA;

- The steps required to reach compliance including, if applicable, technical assistance;

- The time limits for implementing the improvements; and

- The consequences of noncompliance with the SIA.

This provision is retained from the repealed rules without change.

The Commission does not include the requirement from the repealed rules that failure to comply with the terms in the SIA could result in one or more sanctions listed in Chapter 800, Subchapter E. The rules apply to SIAs between the child care contractor and a child care provider. This provision in the repealed rules applies to an SIA that a Board may have with a child care contractor. Thus, this repealed provision is duplicative of Chapter 800, Subchapter E.

§809.116. Recovery of Improper Payments

Section 809.116 states that efforts will be made to recover improper payments and that all improper payments recovered will be managed in accordance with Commission guidelines and policies.

Section 809.116(a) requires Boards to make attempts to recover all improper payments. In addition, this provision states that the Commission will not pay for improper payments. This provision and purpose is retained from the repealed rules without change.

Section 809.116(b) states that the recovery of improper payments will be managed in accordance with Commission policies, procedures, and guidelines. This provision and purpose is retained from the repealed rules without change.

§809.117. Recovery of Improper Payments to a Provider or Parent

Section 809.117 identifies circumstances when providers and parents must repay improper payments for child care and child care services received.

Section 809.117(a) states that a provider must repay improper payments for child care services received in the following circumstances:

- instances involving fraud;

- instances when the provider did not meet the provider eligibility requirements in this chapter;

- instances when the provider was paid for the child care services from another source;

- instances when the provider did not deliver the child care services;

- instances when referred children have been moved from one facility to another without authorization from the child care contractor; and

- other instances when repayment is deemed an appropriate action.

This provision and purpose is retained from the repealed rules without change.

Section 809.117(b) states that a parent must repay improper payments for child care in the following circumstances:

- instances involving fraud as defined in this chapter;

- instances when the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or

- other instances when repayment is deemed an appropriate corrective action.

SUBCHAPTER G. APPEAL PROCEDURES

The Commission proposes new Subchapter G, Appeal Procedures, as follows:

Subchapter G contains the general appeal procedures and requirements that a parent, provider, or a Board's child care contractor must follow to seek a review by a Board or the Commission of any adverse actions taken against them. The Commission retains the provisions in the repealed rules related to the Board review of an appeal as well as the provisions related to appeals to the Commission. As mentioned previously, the Commission has moved the provisions in the repealed rules related to the parent appeal rights to Subsection D (Parent Rights and Responsibilities).

The Commission is considering amendments to Chapter 823 related to General Hearings that may incorporate the appeal procedures for child care services as described in the proposed Subchapter G. Therefore, the appeal procedures outlined in Subchapter G may be subject to repeal and republishing in Chapter 823 at a later date.

§809.131. Board Review

Section 809.131 retains the repealed provisions concerning the Board review of appeals.

Section 809.131(a) retains the repealed rule provisions that a parent, provider, or a Board's child care contractor against whom an adverse action is taken may request a review by the Board. Section 809.131(b) retains the repealed rule provision that the request for review shall be submitted in writing and delivered to the Board within 15 days of the date of written notification of the adverse action and shall contain:

- a concise statement of the disputed adverse action;

- a recommended resolution; and

- any supporting documentation the requester deems relevant to the dispute.

Section 809.131(c) retains the repealed rule provisions stating that upon receipt of a request for review, the Board shall coordinate a review by appropriate Board staff.

Section 809.131(d) retains the repealed rule provisions that additional information may be requested from the Board's child care contractor, provider, and parents and that such information shall be provided within 15 days of the request.

Section 809.131(e) retains the repealed rule provisions that within 30 days of the date the request for review is received or of the date that additional requested information is received by the Board, the Board shall send the Board's child care contractor, provider, or parent written notification of the results of the review.

Section 809.131(f) contains a new provision that a Board must conduct a review prior to an appeal being submitted to the Commission for a hearing. With this provision the Commission clarifies that if an individual requests a review from the Board, the Board must conduct a review of the facts of the appeal and pro-

vide notification of the results of the review to the parties involved. It is not the Commission's intent that individuals bypass the Board review and appeal directly to the Commission.

§809.132. Appeals to the Commission

Section 809.132 contains the provisions related to an individual presenting an appeal to the Commission. The provisions in this proposed section are unchanged from the repealed rules.

Section 809.132(a) states that after the results of a Board review have been issued, the Board's child care contractor, provider, or parent who disagrees with the outcome of the review may request a Commission hearing to appeal the results.

Section 809.132(b) states that the request for an appeal to the Commission from a Board's review shall be filed in writing with the Commission's Appeals Department within 15 days after receiving written notification of the results of the Board review.

Section 809.132(c) states that the appeal to the Commission will include a hearing.

Section 809.132(d) states that the Commission hearing will be held in accordance with Commission policies and procedures applicable to the appeal as contained in Chapter 823 of this title, or as otherwise provided by the Commission.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

We estimate no additional cost to state government and no significant additional cost to local government (i.e., Local Workforce Development Boards) as a result of enforcing or administering a policy for the maintenance of a waiting list that includes determining that the parent is potentially eligible for child care services before placing the parents on the waiting list, or the requirement that parents receiving Transitional Child Care be engaged in work, education, or training activities for at least 25 hours per week (50 for two parents).

Although increased requirements to maintain the waiting list could increase the operating costs to Boards not currently conducting basic eligibility screening for parents placed on the waiting list, the process for reviewing the potential eligibility of a family is to be determined by Board policy and does not require that the eligibility screening include verifying or documenting eligibility. Therefore, the cost impact is largely dependent upon the requirements of the Board policy.

Verifying and documenting the activity requirement for Transitional Child Care could increase the operating costs to Boards. However, this requirement currently exists for certain at-risk child care, and the Boards' child care contractors are already trained to verify the activity requirements. There are no additional costs associated with training or developing a process for verifying this additional requirement.

The Workforce Development Division provides that documenting and verifying new exemptions for enforcing or administering the rule providing for exemptions relating to a child involved in pending adoption proceedings or a child or parent who may be physically or emotionally harmed by cooperation may add an additional cost to local workforce development boards. These additional costs are not known as they will vary by Board.

While the requirement of a sliding fee scale (as required in CCDF regulations and included in the approved CCDF state plan) is included in these rules, and the Commission acknowledges that this change would require corresponding changes in child care automation systems and Board procedures, the Commission is concluding that further analysis of the impact of this rule change should be considered before Boards are required to modify their parent share of cost policies to align more closely with the sliding fee scale based on family income and family size requirements. The Commission commits to work closely with the Boards in order to determine and analyze the potential impact of this requirement.

The Workforce Development Division provides that there are likely cost reductions to Boards as a result of provisions that allow parents to provide documentation to child care providers regarding parental support and removed the distinction between providers with agreements and self-arranged child care providers although the cost reductions are not known as they will vary by Board.

Operational cost relating to allowing documenting and verifying child support compliance with the parent rather than Office of the Attorney General may be reduced. Also, without the distinction between providers and self-arranged child care providers, costs associated with the development and monitoring of provider agreements may be reduced.

We estimate no increase or loss in revenue to the state and to local governments as a result of enforcing or administering the rules.

Enforcing or administering the rules do not have foreseeable implications relating to the cost or revenues of the state or the revenues of local governments. Enforcing or administering the rule does not have significant foreseeable implications relating to the cost of local governments (i.e., Local Workforce Development Boards).

With respect to the "probable economic cost to persons required to comply with the rule," relatives who received child care subsidies and who resided with the eligible child will no longer be eligible for those subsidies. This provision may have economic cost to those persons, as well as to Boards which may have to subsidize alternative child care for those children currently included in these arrangements.

With respect to "adverse economic effect on small- or micro-businesses," the rule that prohibits child care providers from charging parents the difference between the provider's published rate and the amount of the Board's reimbursement rate may have an effect on child care providers (a) whose published rate is more than the Board's maximum reimbursement rate, and (b) who are caring for children of parents participating in Choices or FSE&T, or children receiving protective services.

Boards may also apply this prohibition to providers caring for children whose parents who are not exempt from the parent share of cost. Therefore, the cost impact may be dependent on whether the Board chooses to apply this prohibition to all providers who choose to care for subsidized children. In any case, there stands to be an adverse economic effect (as well as a "probable economic cost to persons required to comply with the rule") on child care providers which currently charge parents (i.e., participating in Choices or FSE&T, or relative to protective services) the difference between the provider's published rate and the amount of the Board's reimbursement rate. We cannot, however, with information available to us, estimate the full extent of this impact.

It is not feasible to waive these requirements for child care providers who are small- or micro-businesses because the vast majority of providers are classified as small- or micro-businesses as defined by Chapter 2006 of the Texas Government Code.

Mark Hughes, Director, Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rules. Mr. Hughes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Luis M. Macias, Director, Workforce Development Division, has determined that a public benefit anticipated as a result of enforcing the proposed rules will be to meet the child care needs of low-income families in Texas in order to assist the families in participating in work, job training, or educational programs with the goal of achieving and maintaining self-sufficiency. Mr. Macias has determined that the streamlining of rule language and clarifications provided throughout the rules will benefit the public through better compliance for Boards, Board child care contractors, parents, and child care providers. Mr. Macias has also determined that an additional public benefit anticipated as a result of enforcing the proposed rules will be to meet the needs of employers to have a more highly skilled workforce through the availability of child care for parents participating in job training and educational activities.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review. The Commission also conducted a conference call with Board executive directors and Board staff on May 26, 2006, to discuss the concept paper. Additionally, Agency staff conducted a conference call with the Child Care Network Policy Workgroup on July 13, 2006. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§809.1, 809.2, 809.4, 809.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.1. Short Title and Purpose.
§809.2. Definitions.
§809.4. Waiver Request.
§809.5. Children of Military Parents in Combat Deployment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2006.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.11 - 809.20

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.11. Board Responsibilities.
§809.12. Board Planning and Policies for Child Care Services.
§809.13. Ensuring Parent Choice.
§809.14. Promoting Consumer Education.
§809.15. Quality Improvement Activities.
§809.16. Procurement.
§809.17. Management of Finances.
§809.18. Information Management and Reporting Requirements.
§809.19. Performance Standards.
§809.20. Leveraging Local Resources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
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SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.41 - 809.44, 809.46 - 809.48

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.41. General Requirements.

§809.42. Minimum Requirements for Providers.

§809.43. Provider Agreements.

§809.44. Provider General Liability Insurance Requirements.

§809.46. Assessing and Collecting Parent's Share of Cost.

§809.47. Reduction of Assessed Parent's Share of Cost.

§809.48. Attendance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
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SUBCHAPTER D. SELF-ARRANGED CARE

40 TAC §§809.61 - 809.63

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.61. Qualifications to Provide Unregulated Relative Self-Arranged Care.

§809.62. Qualifications to Provide Regulated Self-Arranged Care.

§809.63. Reimbursement for Self-Arranged Care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
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SUBCHAPTER E. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71 - 809.79

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.71. Parental Choice.

§809.72. General Parent Rights.

§809.73. Eligibility Documentation.

§809.74. Enrollment Agreements.

§809.75. Parent Reporting Requirements.

§809.76. Parent Appeal Rights.

§809.77. Parent's Right to Withdraw.

§809.78. Parent Responsibility Agreement.

§809.79. Parent Responsibility Agreement, Sanctions and Exceptions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
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SUBCHAPTER F. GENERAL ELIGIBILITY FOR CHILD CARE

40 TAC §§809.91 - 809.93

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.91. Definitions.

§809.92. General Eligibility Requirements.

§809.93. Calculating Income.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
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SUBCHAPTER G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

40 TAC §§809.101 - 809.105

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.101. Transitional Child Care.

§809.102. Choices Child Care.

§809.103. Workforce Orientation Applicant Child Care.

§809.104. Child Care Food Stamp Employment and Training.

§809.105. Children Receiving or Needing Protective Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
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SUBCHAPTER H. CHILDREN OF PARENTS AT RISK OF BECOMING DEPENDENT ON PUBLIC ASSISTANCE

40 TAC §§809.121 - 809.124

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.121. Children Living at Low Incomes.

§809.122. Children with Disabilities.

§809.123. Children of Teen Parents.

§809.124. Children Served by Special Projects.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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SUBCHAPTER J. SCHOOL-LINKED CHILD CARE PROGRAM

40 TAC §§809.201 - 809.205

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.201. Purpose.

§809.202. Definitions.

§809.203. Request for Proposal.

§809.204. Criteria for Award.

§809.205. Use of Award.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. FUNDS MANAGEMENT

40 TAC §§809.221 - 809.226, 809.228, 809.229, 809.231 - 809.233, 809.235

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.221. General Funds Management.

§809.222. Effective Utilization of Funds.

§809.223. Eligibility Verification.

§809.224. Custody and Visitation Arrangements.

§809.225. Continuity of Care.

§809.226. Provider Payments.

§809.228. Units of Service of Child Care.

§809.229. Provider Payment Based on Child Care Enrollment.

§809.231. Provider Reimbursement Rates.

§809.232. Provider Reimbursement for Transportation.

§809.233. Reduction of Parent's Share of Costs and Child Care Subsidies.

§809.235. Billing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
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SUBCHAPTER L. FRAUD INVESTIGATION

40 TAC §§809.251 - 809.253

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.251. General Fraud Investigation Procedures.

§809.252. Suspected Fraud.

§809.253. Action to Prevent or Correct Suspected Fraud.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2006.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER M. APPEAL PROCEDURE

40 TAC §§809.271 - 809.273

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.271. Child Care During Appeal.

§809.272. Board Review.

§809.273. Appeals to the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER N. CORRECTIVE AND ADVERSE ACTION

40 TAC §§809.281 - 809.288

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The repeal affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.281. Contractor Agreement Violations.

§809.282. Provider Agreement Violations.

§809.283. Corrective and Adverse Action.

§809.284. Noncompliance with Other State or Federal Programs.

§809.285. Reapplication for Provider Status after Termination or Nonrenewal of the Provider Agreement.

§809.286. Recovery of Overpayment.

§809.287. Recovery of Overpayment to a Provider or Parent.

§809.288. Failure to Meet Performance Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§809.1 - 809.3

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.1. Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the Child Care Rules.

(b) The purpose of these rules is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the Texas Workforce Commission (Commission), to include:

(1) the Child Care and Development Fund (CCDF), which includes:

(A) funds allocated to local workforce development areas (workforce areas) as provided in §800.58 of this title;

(B) private donated funds described in §809.17(b)(1);

(C) public transferred funds described in §809.17(b)(2);

(D) public certified expenditures described in §809.17(b)(3); and

(E) funds used for children receiving protective services described in §809.49.

(2) other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title.

(c) The rules contained in this chapter shall apply to the Commission, Local Workforce Development Boards (Boards), their child care contractors, child care providers, and parents applying for or eligible to receive child care services.

§809.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Attending a job training or educational program--An individual is considered to be attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

(4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(6) Child with disabilities--A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.

(7) Educational program--A program that leads to:

(A) a high school diploma;

(B) a General Educational Development (GED) credential; or

(C) a postsecondary degree from an institution of higher education.

(8) Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.

(9) Household dependent--An individual living in the household who is one of the following:

(A) an adult considered as a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(10) Improper payments--Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.

(11) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(12) Listed family home--An unregulated family home that is listed with, but not regulated by, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(13) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents of a child enrolled in child care services. This includes deployed parents in the regular military, military reserves, or National Guard.

(14) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing *in loco parentis.* Unless otherwise indicated, the term applies to a single parent or both parents.

(15) Protective services--Services provided when:

(A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;

(B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(16) Provider--A provider is defined as:

(A) a regulated child care provider as defined in §809.2(17);

(B) a relative child care provider as defined in §809.2(18); or

(C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).

(17) Regulated child care provider--An entity that is:

(A) licensed by DFPS;

(B) registered with DFPS;

(C) licensed by the Texas Department of State Health Services as a youth day camp; or

(D) operated and monitored by the United States military services.

(18) Relative child care provider--An individual who does not reside in the same household as an eligible child, is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

(A) The child's grandparent;

(B) The child's great-grandparent;

(C) The child's aunt;

(D) The child's uncle; or

(E) The child's sibling.

(19) Residing with--A child is considered to be residing with the parent when the child's primary place of residence is the same as the parent's primary place of residence.

(20) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(21) Working--Working is defined as:

(A) an activity for which one receives monetary compensation such as a salary, wages, tips, and commissions; or

(B) an activity to assist individuals in obtaining employment including on-the-job training, job creation through wage subsidies, work experience, community service programs, and job search activities (subject to the requirements in §809.41(d)).

§809.3. Waiver Request.

The Commission may waive child care rules upon request from a person directly affected by the rules, if it determines that the waiver benefits a parent, child care contractor, or provider, and the Commission determines that the waiver does not harm child care or violate state or federal statutes or regulations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §§809.11 - 809.21

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.11. Board Responsibilities.

(a) A Board shall be responsible for the administration of child care in a manner consistent with Texas Government Code, Chapter 2308, as amended, and related provisions under Chapter 801 of this title (relating to Local Workforce Development Boards).

(b) A Board shall ensure that access to child care services shall be available through all Texas Workforce Centers within a workforce area.

(c) A Board shall provide child care services as support services for workforce employment, job training, and services under Texas Government Code, Chapter 2308 and Chapter 801 of this title.

(d) Upon request, a Board shall provide the Commission with access to child care administration records and submit related information for review and monitoring, pursuant to Commission rules and policies.

§809.12. Board Plan for Child Care Services.

(a) A Board shall, as part of its Texas Workforce Development Board Plan (Board plan), develop, amend, and modify the Board plan to incorporate and coordinate the design and management of the delivery of child care services with the delivery of other workforce employment, job training, and educational services identified in Texas Government Code §2308.251 et seq., as well as other workforce training and services included in the One-Stop Service Delivery Network.

(b) The goal of the Board plan is to coordinate workforce training and services, to leverage private and public funds at the local level, and to fully integrate child care services for low-income families with the network of workforce training and services under the administration of the Boards.

(c) Boards shall design and manage the Board plan to maximize the delivery and availability of quality child care services that assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or attending a job training or educational program.

§809.13. Board Policies for Child Care Services.

(a) A Board shall develop, adopt, and modify its policies for the design and management of the delivery of child care services in a public process in accordance with Chapter 801 of this title.

(b) A Board shall maintain written copies of the policies that are required by federal and state law, or as requested by the Commission, and make such policies available to the Commission and the public upon request.

(c) A Board shall also submit any modifications, amendments, or new policies to the Commission no later than two weeks after adoption of the policy by the Board.

(d) At a minimum, a Board shall develop policies related to:

(1) how the Board determines that the parent is making progress toward successful completion of a job training or educational program as described in §809.2(1);

(2) maintenance of a waiting list as described in §809.18(b);

(3) assessment of a parent share of cost as described in §809.19, including the reimbursement of providers when a parent fails to pay the parent share of cost;

(4) maximum reimbursement rates as provided in §809.20, including policies related to reimbursement of providers who offer transportation;

(5) family income limits as described in Subchapter C of this chapter (relating to Eligibility for Child Care Services);

(6) provision of child care services to a child with disabilities up to the age of 19 as described in §809.41(a)(1)(B);

(7) minimum activity requirements for parents as described in §§809.48, 809.50, and 809.51;

(8) time limits for the provision of child care while the parent is attending an educational program as described in §809.41(b);

(9) frequency of eligibility redetermination as described in §809.42(b)(2);

(10) Board priority groups as described in §809.43(a);

(11) transfer of a child from one provider to another as described in §809.71(b)(2);

(12) provider eligibility for listed family homes as provided in §809.91(b), if the Board chooses to include listed family homes as eligible providers;

(13) attendance standards and procedures as provided in §809.92(b)(3), including provisions consistent with §809.54(f) (relating to Continuity of Care for custody and visitation arrangements);

(14) providers charging the difference between their published rate and the Board's reimbursement rate as provided in §809.92(d); and

(15) procedures for investigating fraud as provided in §809.111.

§809.14. Coordination of Child Care Services.

(a) A Board shall coordinate with federal, state, and local child care and early development programs and representatives of local governments in developing its Board plan and policies for the design and management of the delivery of child care services, and shall maintain written documentation of its coordination efforts.

(b) Pursuant to Texas Education Code §29.158, and in a manner consistent with federal law and regulations, a Board shall coordinate with school districts, Head Start, and Early Head Start program providers to ensure, to the greatest extent practicable, that full-day, full-year child care is available to meet the needs of low-income parents who are working or attending a job training or educational program.

§809.15. Promoting Consumer Education.

(a) A Board shall promote informed child care choices by providing consumer education information to:

(1) parents who are eligible for child care services;

(2) parents who are placed on a Board's waiting list;

(3) parents who are no longer eligible for child care services; and

(4) applicants who are not eligible for child care services.

(b) The consumer education information shall contain, at a minimum:

(1) information about the Texas Information and Referral Network/2-1-1 Texas information and referral system;

(2) the Web site and telephone number of DFPS, so parents may obtain health and safety requirements including information on:

(A) the prevention and control of infectious diseases (including immunizations);

(B) building and physical premises safety;

(C) minimum health and safety training appropriate to the provider setting; and

(D) the regulatory compliance history of child care providers;

(3) a description of the full range of eligible child care providers set forth in §809.91; and

(4) a description of programs available in the workforce area relating to school readiness and quality rating systems, including:

(A) school readiness models developed by the State Center for Early Childhood Development at the University of Texas Health Science Center (State Center); and

(B) Texas Rising Star Provider criteria.

(c) A Board shall cooperate with the Texas Health and Human Services Commission (HHSC) to provide the Texas Information and Referral Network/2-1-1 Texas with information, as determined by HHSC, for inclusion in the statewide information and referral network.

§809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, shall be used only for the following:

(1) Collaborative reading initiatives;

(2) School readiness, early learning, and literacy; or

(3) Local-level support to promote child care consumer education provided by 2-1-1 Texas.

(b) Allowable activities to support the quality improvement activities described in subsection (a) of this section may include the following:

(1) Professional development and training for child care providers; or

(2) Purchase of curriculum and curriculum-related support resources for child care providers

(c) Activities in subsection (a) of this section may be designed to meet the needs of children in any age group eligible for Commission-funded child care, as well as children with disabilities.

(d) In funding quality improvement activities allowable under this section, a Board may give priority to child care facilities:

(1) participating in the integrated school readiness models developed by the State Center;

(2) implementing components of school readiness curricula as approved by the State Center; or

(3) participating in or voluntarily pursuing participation in Texas Rising Star Provider certification, pursuant to Texas Government Code §2308.316.

(e) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 C.F.R. §98.51.

§809.17. Leveraging Local Resources.

(a) Leveraging Local Funds.

(1) The Commission encourages Boards to secure local public and private funds for the purpose of matching federal funds in order to maximize resources for child care needs in the community.

(2) A Board is encouraged to secure additional local funds in excess of the amount required to match federal funds allocated to the Board in order to maximize its potential to receive additional federal funds should they become available.

(3) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) The Commission accepts the following as local match:

(1) Funds from a private entity that:

(A) are donated without restrictions that require their use for:

(i) a specific individual, organization, facility, or institution; or

(ii) an activity not included in the CCDF State Plan or allowed under this chapter;

(B) do not revert back to the donor's facility or use;

(C) are not used to match other federal funds; and

(D) are certified by both the donor and the Commission as meeting the requirements of subparagraphs (A) - (C) of this paragraph.

(2) Funds from a public entity that:

(A) are transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

(3) Expenditures by a public entity certifying that the expenditures:

(A) are for an activity included in the CCDF State Plan or allowed under this chapter;

(B) are not used to match other federal funds; and

(C) are not federal funds, unless authorized by federal law to be used to match other federal funds.

(c) A Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the requirements of subsection (b) of this section.

(d) Completing Private Donations, Public Transfers, and Public Certifications.

(1) A Board shall ensure that:

(A) private donations of cash and public transfers of funds are paid to the Commission; and

(B) public certifications are submitted to the Commission.

(2) Private donations and public transfers are considered complete when the funds have been received by the Commission.

(3) Public certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible activities described in subsection (b)(3) of this section.

(e) A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of federal matching funds available through the Commission do not exceed an amount that corresponds to the private donations, public transfers, and public certifications that are completed by the end of the program year.

§809.18. Maintenance of a Waiting List.

(a) A Board shall ensure that a list of parents waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.

(b) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:

(1) the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and

(2) the frequency in which the parent information is updated and maintained on the waiting list.

§809.19. Assessing the Parent Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, the following shall apply.

(1) A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:

(A) being assessed to all parents, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being a sliding fee scale based on the family's size and gross monthly income, and also may consider the number of children in care; and

(C) not exceeding the cost of care.

(2) Parents who are one or more of the following are exempt from paying the parent share of cost:

(A) Parents who are participating in Choices;

(B) Parents who are participating in Food Stamp Employment and Training (FSE&T) services; or

(C) Parents who have children who are receiving protective services, unless DFPS assesses the parent share of cost.

(3) Teen parents who are not covered under exemptions listed in paragraph (2) of this subsection shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).

(b) For child care services funded from sources other than those specified in subsection (a) of this section, a Board shall set a parent share of cost policy based on a sliding fee scale. The sliding fee scale may be the same as or different from the provisions contained in subsection (a) of this section.

(c) A Board shall establish a policy regarding reimbursement of providers when parents fail to pay the parent share of cost.

(d) The Board or its child care contractor may review the assessed parent share of cost for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may reduce the assessed parent share of cost if warranted by these circumstances.

(e) If the parent is not covered by an exemption as specified in subsection (a)(2) of this section, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.

(f) If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimburse-

ment rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care.

(b) A Board shall establish graduated reimbursement rates for:

(1) child care providers participating in integrated school readiness models developed by the State Center; and

(2) Texas Rising Star Providers pursuant to Texas Government Code §2308.315.

(c) The minimum reimbursement rates established under subsection (b) of this section shall be at least five % greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate.

(d) A Board or its child care contractor shall ensure that providers who are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in subsection (b) of this section.

(e) The Board shall determine whether to reimburse providers who offer transportation.

(f) The combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

§809.21. Determining the Amount of the Provider Reimbursement.

The actual reimbursement that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum rate or the provider's published rate, whichever is lower, less the following amounts:

(1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and

(2) Any child care funds received by the parent from other public or private entities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §§809.41 - 809.54

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.41. A Child's General Eligibility for Child Care Services.

(a) Except for a child receiving or needing protective services as described in §809.49, for a child to be eligible to receive child care services, the child shall:

(1) meet one of the following age requirements:

(A) be under 13 years of age; or

(B) at the option of the Board, be a child with disabilities under 19 years of age.

(2) reside with:

(A) a family whose income does not exceed the income limit established by the Board, which income limit must not exceed 85% of the state median income for a family of the same size; and

(B) parents who require child care in order to work or attend a job training or educational program.

(b) Notwithstanding the requirements set forth in subsection (c) of this section, a Board shall establish policies, including time limits, for the provision of child care services while the parent is attending an educational program.

(c) Time limits pursuant to subsection (b) of this section shall be for four years, if the eligible child's parent is enrolled in an associate's degree program that will prepare the parent for a job in a high-growth, high-demand occupation as determined by the Board.

(d) Unless otherwise subject to job search limitations as stipulated in this title, the following shall apply:

(1) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically, §800.58 Child Care), an enrolled child may be eligible for child care services for four weeks within a federal fiscal year in order for the child's parent to search for work because of interruptions in the parent's employment.

(2) For child care services funded by the Commission from sources other than those specified in paragraph (1) of this subsection, child care services during job search activities are limited to four weeks within a federal fiscal year.

§809.42. Eligibility Determination and Verification.

(a) A Board shall ensure that its child care contractor verifies eligibility for child care services prior to authorizing child care.

(b) Eligibility for child care services shall be redetermined:

(1) any time there is a change in family income or other information that could affect eligibility to receive child care services; and

(2) on an established frequency at the Board's discretion.

(c) A Board shall ensure that a public entity certifying expenditures for direct child care as described in §809.17(b)(3) determines and verifies that the expenditures are for child care provided to an eligible child. At a minimum, the public entity shall verify that the child:

(1) is under 13 years of age, or at the option of the Board, is a child with disabilities under 19 years of age; and

(2) resides with:

(A) a family whose income does not exceed 85% of the state median income for a family of the same size; and

(B) a parent who requires child care in order to work or attend a job training or educational program.

§809.43. Priority for Child Care Services.

(a) A Board shall ensure that child care services are prioritized among the following three priority groups:

(1) The first priority group is assured child care services and includes children of parents eligible for the following:

(A) Choices child care as referenced in §809.45;

(B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46;

(C) FSE&T child care as referenced in §809.47; and

(D) Transitional child care as referenced in §809.48.

(2) The second priority group is served subject to the availability of funds and includes, in the order of priority:

(A) children who need to receive protective services child care as referenced in §809.49;

(B) children of a qualified veteran as defined in §801.23 of this title;

(C) children of a foster youth as defined in §801.23 of this title;

(D) children of teen parents as defined in §809.2; and

(E) children with disabilities as defined in §809.2.

(3) The third priority group includes any other priority adopted by the Board.

(b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

§809.44. Calculating Family Income.

(a) Unless otherwise required by federal or state law, the family income for purposes of determining eligibility means the monthly total of the following items for each member of the family (as defined in §809.2(8)):

(1) Total gross earnings before deductions are made for taxes. These earnings include wages, salaries, commissions, tips, piece-rate payments, and cash bonuses earned.

(2) Net income from self-employment. Net income includes gross receipts minus business-related expenses from a person's own business, professional enterprise, or partnership, which result in the person's net income. Net income also includes gross receipts minus operating expenses from the operation of a farm.

(3) Pensions, annuities, insurance, and retirement income. This includes Social Security pensions, veteran's pensions and survivor's benefits and any cash benefit paid to retirees or their survivors by a former employer, or by a union, either directly or through an insurance company. This also includes payments from annuities and life insurance.

(4) Taxable capital gains, dividends, and interest. These earnings include capital gains from the sale of property and earnings from dividends from stock holdings, and interest on savings or bonds.

(5) Rental income. This includes income from rental of a house, homestead, store, or other property, or rental income from boarders or lodgers.

(6) Public assistance payments. These payments include TANF as authorized under Chapters 31 or 34 of the Texas Human Resources Code, refugee assistance, Social Security Disability Insurance, Supplemental Security Income, and general assistance (such as cash payments from a county or city).

(7) Income from estate and trust funds. These payments include income from estates, trust funds, inheritances, or royalties.

(8) Unemployment compensation. This includes unemployment payments from governmental unemployment insurance agencies or private companies and strike benefits while a person is unemployed or on strike.

(9) Workers' compensation income, death benefit payments and other disability payments. These payments include compensation received periodically from private or public sources for on-the-job injuries.

(10) Spousal maintenance or alimony. This includes any payment made to a spouse or former spouse under a separation or divorce agreement.

(11) Child support. These payments include court-ordered child support, any maintenance or allowance used for current living costs provided by parents to a minor child who is a student, or any informal child support cash payments made by an absent parent for the maintenance of a minor.

(12) Court settlements or judgments. This includes awards for exemplary or punitive damages, non-economic damages, and compensation for lost wages or profits.

(b) Income to the family that is not included in subsection (a) of this section is excluded in determining the total family income. Specifically, family income does not include:

(1) Food stamps;

(2) Monthly monetary allowances provided to or for children of Vietnam veterans born with certain birth defects;

(3) Educational scholarships, grants, and loans;

(4) Earned Income Tax Credit (EITC) and the Advanced EITC;

(5) Individual Development Account (IDA) withdrawals;

(6) Tax refunds;

(7) VISTA and AmeriCorps living allowances and stipends;

(8) Noncash or in-kind benefits received in lieu of wages;

(9) Foster care payments; and

(10) Special military pay or allowances, which include subsistence allowances, housing allowances, family separation allowances, or special allowances for duty subject to hostile fire or imminent danger.

§809.45. Choices Child Care.

(a) A parent is eligible for Choices child care if the parent is participating in the Choices program as stipulated in Chapter 811 of this title.

(b) A parent who has been approved for Choices, but is waiting to enter an approved initial component of the program, may be eligible for up to two weeks of child care services if:

(1) child care services will prevent loss of the Choices placement; and

(2) child care is available to meet the needs of the child and parent.

§809.46. Temporary Assistance for Needy Families Applicant Child Care.

(a) A parent is eligible for TANF Applicant child care if the parent:

(1) receives a referral from the Health and Human Services Commission (HHSC) to attend a Workforce Orientation for Applicants (WOA);

(2) locates employment or has increased earnings prior to TANF certification; and

(3) needs child care to accept or retain employment.

(b) To receive TANF Applicant child care, the parent shall be working and not have voluntarily terminated paid employment of at least 25 hours a week within 30 days prior to receiving the referral from HHSC to attend a WOA, unless the voluntary termination was for good cause connected with the parent's work.

(c) Subject to the availability of funds and the continued employment of the parent, TANF Applicant child care shall be provided for up to 12 months or until the family reaches the Board's income limit for eligibility under any provision contained in §§809.50 - 809.52, whichever occurs first.

(d) Parents who are employed fewer than 25 hours a week at the time they apply for temporary cash assistance are limited to 90 days of TANF Applicant child care. Applicant child care may be extended to a total of 12 months, inclusive of the 90 days, if before the end of the 90-day period, the applicant increases the hours of employment to a minimum of 25 hours a week.

(e) Subject to the availability of funds, a parent whose time limit for TANF Applicant child care has expired may continue to be eligible for child care services provided the parent and child are otherwise eligible under any provision contained in §§809.50 - 809.52.

§809.47. Food Stamp Employment and Training Child Care.

A parent is eligible to receive FSE&T child care services if the parent is participating in FSE&T services, in accordance with the provisions of 7 C.F.R. Part 273, as long as the case remains open.

§809.48. Transitional Child Care.

(a) A parent is eligible for Transitional child care services if the parent:

(1) has been denied TANF because of increased earnings; or

(2) has been denied temporary cash assistance within 30 days because of expiration of TANF time limits; and

(3) requires child care to work or attend a job training or educational program for a combination of at least 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

(b) Boards may establish an income eligibility limit for Transitional child care that is higher than the eligibility limit for children in families at risk of becoming dependent on public assistance, provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

(c) Transitional child care shall be available for:

(1) a period of up to 12 months from the effective date of the TANF denial; or

(2) a period of up to 18 months from the effective date of the TANF denial in the case of a former TANF recipient who was eligible for child caretaker exemptions pursuant to Texas Human Resources Code §31.012(c) and voluntarily participates in the Choices program.

(d) Former TANF recipients who are not employed when TANF expires, including recipients who are engaged in a Choices activity except as provided under subsection (e) of this section, shall receive up to four weeks of Transitional child care in order to allow these individuals to search for work as needed.

(e) Former TANF recipients who are engaged in a Choices activity, are meeting the requirements of Chapter 811 of this title, and are denied TANF because of receipt of child support shall be eligible to receive Transitional child care services until the date on which the individual completes the activity, as defined by the Board.

§809.49. Child Care for Children Receiving or Needing Protective Services.

(a) A Board shall ensure that determinations of eligibility for children needing protective services are performed by DFPS.

(1) Child care will continue as long as authorized and funded by DFPS.

(2) DFPS may authorize child care for a child under court supervision up to age 19.

(b) A Board shall ensure that requests made by DFPS for specific eligible providers are enforced for children in protective services.

§809.50. Child Care for Children Living at Low Incomes.

(a) A parent is eligible for child care services under this section if:

(1) the family income does not exceed the income limit established by the Board provided that the income limit does not exceed 85% of the state median income for a family of the same size; and

(2) child care is required for the parent to work or attend a job training or educational program for a minimum of 25 hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

(b) A Board may allow a reduction to the requirement in subsection (a)(2) of this section if a parent's documented medical disability or need to care for a physically or mentally disabled family member prevents the parent from participating in the activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (a)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

§809.51. Child Care for Children with Disabilities.

(a) A child with disabilities is eligible for child care services if:

(1) the child resides with a family whose income, after deducting the cost of the child's ongoing medical expenses, does not exceed the income limit established by the Board; and

(2) child care is required for the child's parents to work or attend a job training or educational program for a minimum of 25

hours per week for a single-parent family or 50 hours per week for a two-parent family, or a higher number of hours per week as established by a Board.

(b) A Board may allow a reduction to the requirements in subsection (a)(2) of this section if the need to care for a child with disabilities prevents the parent from participating in the activities for the required hours per week.

(c) For purposes of meeting the education requirements stipulated in subsection (b)(2) of this section, each credit hour of postsecondary education will count as three hours of education activity per week.

§809.52. Child Care for Children of Teen Parents.

(a) A child of a teen parent may be eligible for child care if:

(1) the teen parent needs child care services to complete high school or the equivalent; and

(2) the teen parent's family income does not exceed the income eligibility limit established by the Board. Boards may establish a higher income eligibility limit for teen parents provided that the higher income limit does not exceed 85% of the state median income for a family of the same size.

(b) The teen parent's family income is based solely on the teen parent's income and size of the teen's family as defined in §809.2(8).

§809.53. Child Care for Children Served by Special Projects.

(a) Special projects developed in federal and state statutes or regulations may add groups of children eligible to receive child care.

(b) The eligibility criteria as stated in the statutes or regulations shall control for the special project, unless otherwise indicated by the Commission.

(c) The time limit for receiving child care for children served by special projects may be:

(1) specifically prescribed by federal or state statutes or regulations according to the particular project;

(2) otherwise set by the Commission depending on the purpose and goals of the special project; and

(3) limited to the availability of funds.

§809.54. Continuity of Care.

(a) Enrolled children, including children whose eligibility for Transitional child care has expired, shall receive child care as long as the family remains eligible for any available source of Commission-funded child care except as otherwise provided under subsection (b) of this section.

(b) Except as provided by §809.76(b) relating to child care during appeal, nothing in this chapter shall be interpreted in a manner as to result in a child being removed from care, except when removal from care is required for child care to be provided to a child of parents eligible for the first priority group as provided in §809.43.

(c) In closed DFPS Child Protective Services cases (DFPS cases) where child care is no longer funded by DFPS, the following shall apply:

(1) Former DFPS Children Needing Protective Services Child Care. Regardless of whether the family meets the income eligibility requirements of the Board or is working or attending a job training or educational program, if DFPS determines on a case-by-case basis that the child continues to need protective services and child care is integral to that need, then the Board shall continue the child care by using other funds, including funds received through the Commission, for child care services for up to six months after DFPS case is closed.

(2) Former DFPS Children Not Needing Protective Services Child Care. If the family meets the income eligibility requirements of the Board and if DFPS does not state on a case-by-case basis that the child continues to need protective services or child care is not integral to that need, then the Board may provide care subject to the availability of funds. To receive care under this paragraph, the parents must be working or attending a job training or an educational program.

(d) A Board shall ensure that no children of military parents in military deployment have a disruption of child care services or eligibility because of the military deployment.

(e) A Board shall ensure that a child who is required by a court-ordered custody or visitation arrangement to leave a provider's care is permitted to continue receiving child care by the same provider, or another provider if agreed to by the parent in advance of the leave, upon return from the court-ordered custody or visitation arrangement.

(f) A Board may encourage parents of other children to temporarily utilize the space the child under court-ordered custody or visitation arrangement has vacated until the child returns so he or she can return to the same provider.

(g) A Board shall ensure that parents who choose to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.

(h) A Board shall ensure that parents who choose not to accept temporary child care to fill a position opened because of court-ordered custody or visitation shall not lose their place on the waiting list.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
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SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71 - 809.77

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.71. Parent Rights.

A Board shall ensure that the Boards child care contractor informs the parent in writing that the parent has the right to:

(1) choose the type of child care provider that best suits their needs and to be informed of all child care options available to them as included in the consumer education information described in §809.15.

(2) visit available child care providers before making their choice of a child care option;

(3) receive assistance in choosing initial or additional child care referrals including information about the Board's policies regarding transferring children from one provider to another; and

(4) be informed of the Commission rules and Board policies related to providers charging parents the difference between the Board's reimbursement and the provider's published rate as described in §809.92(c) - (d).

(5) be represented when applying for child care services;

(6) be notified of their eligibility to receive child care services within 20 days from the day the Board's child care contractor receives all necessary documentation required to determine eligibility for child care;

(7) receive child care services regardless of race, color, national origin, age, sex, disability, political beliefs, or religion;

(8) have the Board and the Board's child care contractor treat information used to determine eligibility for child care services as confidential;

(9) receive written notification, except as provided by paragraph (10) of this section, from the Board's child care contractor at least 15 days before the denial, delay, reduction, or termination of child care services unless the following exceptions apply:

(A) Notification of denial, delay, reduction, or termination of child care services is not required when the services are authorized to cease immediately because either the parent is no longer participating in the Choices program or services are authorized to end immediately for children in protective services child care; or

(B) The Choices program participants and children in protective services child care are notified of denial, delay, reduction, or termination of child care and the effective date of such actions by the Choices case worker or DFPS;

(10) receive 30-day written notification from the Board's child care contractor if child care is to be terminated in order to make room for a priority group described in §809.43(a)(1), as follows:

(A) Written notification of denial, delay, reduction or termination shall include information regarding other child care options for which the recipient may be eligible.

(B) If the notice on or before the 30th day before denial, delay, reduction, or termination in child care would interfere with the ability of the Board to comply with its duties regarding the number of children served or would require the expenditure of funds in excess of the amount allocated to the Board, notice may be provided on the earliest date on which it is practicable for the Board to provide notice;

(11) reject an offer of child care services or voluntarily withdraw their child from child care unless the child is in protective services;

(12) be informed of the possible consequences of rejecting or ending the child care that is offered;

(13) be informed of the eligibility documentation and reporting requirements described in §809.72 and §809.73; and

(14) be informed of the parent appeal rights described in §809.74.

§809.72. Parent Eligibility Documentation Requirements.

(a) Parents shall provide the Board's child care contractor with all information necessary to determine eligibility according to the Board's administrative policies and procedures.

(b) A parent's failure to submit eligibility documentation may result in denial or termination of child care services.

§809.73. Parent Reporting Requirements.

(a) Parents shall report to the child care contractor, within 10 days of the occurrence, the following:

(1) Changes in family income;

(2) Changes in family size;

(3) Changes in work or attendance in a job training or educational program;

(4) The receipt or the awarding of any child care funds from other public or private entities; or

(5) Any other changes that may affect the child's eligibility or parent share of cost for child care.

(b) Failure to report changes may result in:

(1) termination of child care;

(2) recovery of payments by the Board, the Board's child care contractor, or the Commission; or

(3) fact-finding for suspected fraud as described in Subchapter F of this chapter.

(c) The receipt of child care services for which the parent is no longer eligible constitutes grounds on which to suspect fraud.

§809.74. Parent Appeal Rights.

(a) Unless otherwise stated in this section, a parent may request a hearing pursuant to Subchapter G of this chapter (relating to Appeal Procedure) if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by the Board's child care contractor.

(b) A parent may have an individual represent them during this process.

(c) A parent of a child in protective services may not appeal pursuant to Subchapter G of this chapter, but shall follow the procedures established by DFPS.

(d) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by a Choices case worker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 811 of this title.

(e) If the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated by an FSE&T case worker, the parent may not appeal pursuant to Subchapter G of this chapter, but may appeal following the procedures in Chapter 813 of this title.

§809.75. Child Care during Appeal.

(a) For a child currently enrolled in child care, a Board shall ensure that child care services continue during the appeal process until a decision is reached, if the parent requests a hearing.

(b) A Board shall ensure that child care does not continue during the appeal process if the parent's eligibility or child's enrollment is denied, delayed, reduced, or terminated because of:

(1) excessive absences;

(2) voluntary withdrawal from child care;

(3) change in federal or state laws or regulations that affect the parent's eligibility;

(4) lack of funding because of increases in the number of enrolled children in state and Board priority groups;

(5) a sanctions finding against the parent participating in the Choices program;

(6) voluntary withdrawal of a parent from the Choices program;

(7) nonpayment of parent fees; or

(8) a parent's failure to report, within 10 days of occurrence, any change in the family's circumstances that would have rendered the family ineligible for subsidized child care.

(c) The cost of providing services during the appeal process is subject to recovery from the parent by the Board, if the appeal decision is rendered against the parent.

§809.76. Parent Responsibility Agreement.

(a) The parent of a child receiving child care services is required to sign a parent responsibility agreement (PRA) as part of the child care enrollment process, unless covered by the provisions of Texas Human Resources Code §31.0031. The parent's compliance with the provisions of the agreement shall be reviewed at each eligibility redetermination.

(b) The PRA requires that:

(1) for cases in which the child has a noncustodial parent, the custodial parent shall:

(A) cooperate with the Office of the Attorney General (OAG) to establish paternity of the parent's children and to enforce child support on an ongoing basis by:

(i) providing documentation to the Board's child care contractor that the parent has an open child support case with OAG and is cooperating with OAG; or

(ii) opening a child support case with OAG and providing documentation to the Board's child care contractor that the parent is cooperating with OAG; or

(B) provide documentation to the Board's child care contractor that the parent has an arrangement with the noncustodial parent for child support and is receiving child support on a regular basis. Such documentation must include evidence of child support payment history;

(2) each parent shall not use, sell, or possess marijuana or other controlled substances in violation of Texas Health and Safety Code, Chapter 481, and abstain from alcohol abuse; and

(3) each parent shall ensure that each family member younger than 18 years of age attends school regularly, unless the child has a high school diploma or a General Educational Development credential, or is specifically exempted from school attendance by Texas Education Code §25.086.

(c) Failure by the parent to comply with any of the provisions of the PRA shall result in sanctions as determined by the Board, up to and including terminating the family's child care services.

§809.77. Exemptions from the Parent Responsibility Agreement.

Notwithstanding the requirements set forth in §809.76(b)(1), the parent is not required to comply with those requirements if one or more of the following situations exist:

(1) the paternity of the child cannot be established after a reasonable effort to do so;

(2) the child was conceived as a result of incest or rape;

(3) the parent of the child is a victim of domestic violence;

(4) adoption proceedings for the child are pending;

(5) the parent of the child has been working with an agency for three months or less to decide whether to place the child for adoption;

(6) the child may be physically or emotionally harmed by cooperation; or

(7) the parent may be physically or emotionally harmed by cooperation, to the extent of impairing the parent's ability to care for the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §§809.91 - 809.93

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.91. Minimum Requirements for Providers.

(a) A Board shall ensure that child care subsidies are paid only to:

(1) regulated child care providers as described in §809.2(17);

(2) relative child care providers as described in §809.2(18); or

(3) at the Board option, listed family homes as defined in §809.2(12), subject to the requirements in subsection (b) of this section.

(b) If a Board chooses to include listed family homes, a Board shall ensure that there are in effect, under local law, requirements applicable to the listed family homes designated to protect the health and safety of children. Pursuant to 45 C.F.R. §98.41, the requirements shall include:

(1) the prevention and control of infectious diseases (including immunizations);

(2) building and physical premises safety; and

(3) minimum health and safety training appropriate to the child care setting.

(c) Except as provided by the criteria for Texas Rising Star Provider Certification, a Board or the Board's child care contractor shall not place requirements on regulated providers that:

(1) exceed the state licensing requirements stipulated in Texas Human Resources Code, Chapter 42; or

(2) have the effect of monitoring the provider for compliance with state licensing requirements stipulated in Texas Human Resources Code, Chapter 42.

(d) When a Board or the Board's child care contractor, in the course of fulfilling its responsibilities, gains knowledge of any possible violation regarding regulatory standards, the Board or its child care contractor shall report the information to the appropriate regulatory agency.

§809.92. Provider Responsibilities and Reporting Requirements.

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for reimbursement under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21(2); and

(3) follow attendance reporting and tracking procedures required by the Commission, Board, or, if applicable, the Board's child care contractor. At a minimum, the provider shall:

(A) document and maintain a record of each child's attendance and submit attendance records to the Board's child care contractor upon request;

(B) inform the Board's child care contractor when an enrolled child is absent; and

(C) inform the Board's child care contractor that the child has not attended the first three days of scheduled care. The provider has until the close of the third day of scheduled attendance to contact the Board's child care contractor regarding the child's absence.

(c) Providers shall not charge the difference between the provider's published rate and the amount of the Board's reimbursement rate as determined under §809.21 to parents who are exempt from the parent share of cost assessment under §809.19(a)(2).

(d) A Board may develop a policy that prohibits providers from charging the difference between the provider's published rate and the amount of the Board's reimbursement rate (including the assessed parent share of cost) to all parents eligible for child care services.

§809.93. Provider Reimbursement.

(a) A Board shall ensure that reimbursement for child care is paid:

(1) to the provider only; and

(2) after the Board or its child care contractor receives a complete Declaration of Services Statement from the provider verifying that services were rendered.

(b) The Declaration of Services Statement shall contain:

(1) name, age, and identifying information of the child;

(2) amount of care provided in terms of units of care;

(3) rate of payment;

(4) dates services were provided;

(5) name and identifying information of the provider, including the location where care is provided;

(6) verification by the provider that the information submitted in the Declaration is correct; and

(7) additional information as may be required by the Boards.

(c) A relative child care provider shall not be reimbursed for more children than permitted by the DFPS minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(d) A Board shall not reimburse providers that are debarred from other state or federal programs unless and until the debarment is removed.

(e) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, reimbursement for child care is based on the unit of service delivered, as follows:

(1) a full-day unit of service is 6 to 12 hours of care provided within a 24-hour period; and

(2) a part-day unit of service is fewer than 6 hours of care provided within a 24-hour period.

(f) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open except as consistent with attendance policies as established by the Board.

(g) A Board or the Board's child care contractor shall not pay providers:

(1) less, when a child enrolled full time occasionally attends for a part day; or

(2) more, when a child enrolled part time occasionally attends for a full day.

(h) The Board or its child care contractor shall not reimburse a provider retroactively for new Board maximum reimbursement rates or new provider published rates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

40 TAC §§809.111 - 809.117

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.111. General Fraud Fact-Finding Procedures.

(a) This subchapter establishes authority for a Board to develop procedures for the prevention of fraud by a parent, provider, or any other person in a position to commit fraud consistent with fraud prevention provisions in the Agency-Board Agreement.

(b) A Board shall ensure that procedures for researching and fact-finding for possible fraud are developed and implemented to deter and detect suspected fraud for child care services in the workforce area.

(c) These procedures shall include provisions that ensure each case of suspected fraud is reported to the Commission in writing, including documentation of relevant facts.

(d) Upon review of suspected fraud reports, the Commission may either accept the case for investigation and action at the state level, or return the case to the Board or its child care contractor for action including, but not limited to, the following:

(1) further fact-finding; or

(2) other corrective action as provided in this chapter or as may be appropriate.

(e) The Board shall ensure that a final fact-finding report is submitted to the Commission after a case is returned to the Board or its child care contractor and all feasible avenues of fact-finding and corrective actions have been exhausted.

§809.112. Suspected Fraud.

A parent, provider, or any other person in a position to commit fraud may be suspected of fraud if the person presents or causes to be presented to the Board or its child care contractor one or more of the following items:

(1) a request for reimbursement in excess of the amount charged by the provider for the child care; or

(2) a claim for child care services if evidence indicates that the person may have:

(A) known, or should have known, that child care services were not provided as claimed;

(B) known, or should have known, that information provided is false or fraudulent;

(C) received child care services during a period in which the parent or child was not eligible for services;

(D) known, or should have known, that child care subsidies were provided to a person not eligible to be a provider; or

(E) otherwise indicated that the person knew or should have known that the actions were in violation of this chapter or state or federal statute or regulations relating to child care services.

§809.113. Action to Prevent or Correct Suspected Fraud.

The Commission, Board, or Board's child care contractor may take the following actions if the Commission finds that a person has committed fraud:

(1) temporary withholding of payments to the provider for child care services delivered;

(2) nonpayment of child care services delivered;

(3) recoupment of funds from the parent or provider; or

(4) any other action consistent with the intent of the governing statutes or regulations to investigate, prevent, or stop suspected fraud.

§809.114. Failure to Comply with Commission Rules and Board Policies.

(a) The Board shall ensure that parents and providers comply with Commission rules.

(b) The Commission, Board or Board's child care contractor may consider failure by a provider or parent to comply with this chapter as an act that may warrant corrective and adverse action as detailed in §809.115 (relating to Corrective Adverse Actions).

(c) Failure by a provider or parent to comply with this chapter shall also be considered a breach of contract, which may also result in corrective action as detailed in this subchapter.

§809.115. Corrective Adverse Actions.

(a) When determining appropriate corrective actions, the Board or Board's child care contractor shall consider:

(1) The scope of the violation;

(2) The severity of the violation; and

(3) The compliance history of the person or entity.

(b) Corrective actions may include, but are not limited to, the following:

(1) Closing intake;

(2) Moving children to another provider selected by the parent;

(3) Withholding provider payments or reimbursement of costs incurred;.

(4) Termination of child care services; and

(5) Recoupment of funds.

(c) When a provider violates a provision of Subchapter E of this chapter, a written Service Improvement Agreement may be negotiated between the provider and the Board or the Board's child care contractor. At the least, the Service Improvement Agreement shall include the following:

(1) The basis for the Service Improvement Agreement;

(2) The steps required to reach compliance including, if applicable, technical assistance;

(3) The time limits for implementing the improvements; and

(4) The consequences of noncompliance with the Service Improvement Agreement.

§809.116. Recovery of Improper Payments.

(a) A Board shall attempt recovery of all improper payments. The Commission shall not pay for improper payments.

(b) Recovery of improper payments shall be managed in accordance with Commission policies and procedures.

§809.117. Recovery of Improper Payments to a Provider or Parent.

(a) The provider shall repay improper payments for child care services received in the following circumstances:

(1) Instances involving fraud;

(2) Instances in which the provider did not meet the provider eligibility requirements in this chapter;

(3) Instances in which the provider was paid for the child care services from another source;

(4) Instances in which the provider did not deliver the child care services;

(5) Instances in which referred children have been moved from one facility to another without authorization from the child care contractor; and

(6) Other instances when repayment is deemed an appropriate action.

(b) A parent shall repay improper payments for child care in the following circumstances:

(1) Instances involving fraud as defined in this chapter;

(2) Instances in which the parent has received child care services while awaiting an appeal and the determination is affirmed by the hearing officer; or

(3) Other instances in which repayment is deemed an appropriate corrective action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. APPEAL PROCEDURES

40 TAC §809.131, §809.132

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.131. Board Review.

(a) A parent, provider, or a Board's child care contractor against whom an adverse action is taken may request a review by the Board.

(b) A request for review shall be submitted in writing and delivered to the Board within 15 days of the date of written notification of the adverse action. The request shall also contain:

(1) a concise statement of the disputed adverse action;

(2) a recommended resolution; and

(3) any supporting documentation the requester deems relevant to the dispute.

(c) On receipt of a request for review, the Board shall coordinate a review by appropriate Board staff.

(d) Additional information may be requested from the Board's child care contractor, provider, and parents. Such information shall be provided within 15 days of the request.

(e) Within 30 days of the date the request for review is received, or of the date that additional requested information is received by the reviewing Board staff member, the Board shall send the Board's child care contractor, provider, or parent written notification of the results of the review.

(f) A Board must have conducted a review prior to an appeal being submitted to the Commission for a hearing.

§809.132. Appeals to the Commission.

(a) After results of a review have been issued, the Board's child care contractor, provider, or parent who disagrees with the outcome of the review may request a Commission hearing to appeal the results of the review.

(b) The request for appeal to the Commission from a Board's review shall be filed in writing with the Appeals Department, Texas Workforce Commission, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 15 days after receiving written notification of the results of the review.

(c) The appeal to the Commission will include a hearing, which is limited to the issues and information considered in the Board review.

(d) The Commission hearing will be held in accordance with Commission policies and procedures applicable to the appeal as contained in Chapter 823 of this title, or as otherwise provided by the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 30. ENVIRONMENTAL QUALITY

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PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 293. WATER DISTRICTS

SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.54

The Texas Commission on Environmental Quality withdraws the proposed amendments to §293.54 which appeared in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3199).

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Robert Martinez
Director, Environmental Law Division
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SUBCHAPTER P. ACQUISITION OF ROAD POWERS AND FUNDING OF ROAD PROJECTS

30 TAC §293.201, §293.202

The Texas Commission on Environmental Quality withdraws the proposed amendments to §293.201 and §293.202 which appeared in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3199).

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.36

The Texas State Securities Board adopts the repeal of §133.36, a form concerning a request for reduced fees for certain persons registered in multiple capacities, without changes to the proposal published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6440).

The repeal of this form allows for the simultaneous adoption of a new form.

The repeal eliminates an outdated form.

No comments were received regarding adoption of the repeal.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

Cross-reference to Statute: Texas Civil Statutes, Article 581-42.B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605459
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: October 26, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 305-8303

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7 TAC §133.36

The Texas State Securities Board adopts by reference new §133.36, a form concerning a request for reduced fees for certain persons registered in multiple capacities, without changes to the proposal published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6440).

The adopted new form updates cross references to the rules that set out the criteria and procedure for using this form.

The adopted form accurately references the rules regarding use of the form.

No comments were received regarding adoption of the new form.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

Cross-reference to Statute: Texas Civil Statutes, Article 581-42.B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605460
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: October 26, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.102

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.102 relating to Bingo Advisory Committee

(BAC) without changes to the proposed text as published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6448).

The amendments clarify the BAC's responsibility to report to the Commission and the basis for removal of a member of the BAC.

The Commission received no comments during the comment period, either in writing on in person at the public hearing held on August 29, 2006, at the Commission Headquarters located at 611 E. 6th Street, Austin, Texas.

The amendments are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2006.

TRD-200605452
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: October 25, 2006
Proposal publication date: August 18, 2006
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.61

The Texas Real Estate Commission (TREC) adopts an amendment to §535.61 concerning Examinations without changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6616) and will not be republished. Section 535.61 authorizes the commission to waive the national portion of the examination for an applicant who has passed a comparable national examination that has been certified by a nationally recognized real estate regulator association. The amendment to §535.61 clarifies that the waiver would only apply to an applicant who has a current license equivalent to the license being applied for.

The reasoned justification for the amendment is clarification that acceptance of national test results from other states with comparable examinations applies in the circumstances described above.

No comments were received on the amendment as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 2, 2006.

TRD-200605402
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: October 22, 2006
Proposal publication date: August 25, 2006
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 141. MASSAGE THERAPISTS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§141.1 - 141.3, 141.5 - 141.7, 141.10, 141.11, 141.13 - 141.17, 141.20, 141.21, 141.24 - 141.27, 141.29 - 141.34, 141.36, 141.37, 141.40, 141.50, 141.51, 141.53 - 141.55, 141.60 - 141.62, and 141.64 -141.66 and the repeal of §141.12, concerning the licensing and regulation of massage therapy without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2990) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and repeal are necessary to implement provisions of House Bill 2696, 79th Legislature, Regular Session (2005), which amended Occupations Code, Chapter 455, relating to the licensing and regulation of massage therapy. The bill specifically changed the term for massage therapy regulation from "registered" to "licensed"; provided for an increased level of regulation of the practice of massage therapy; deleted the department's authority to issue temporary registrations; added language regarding criminal convictions and eligibility for licensure; and modified other administrative aspects of the licensing program. The amendments also clarify the number of apprenticeship hours that a student may obtain before being required to become licensed, implement late renewal fees for massage therapy educational programs that fail to renew timely, and eliminate the written examination review and associated fees.

SECTION-BY-SECTION SUMMARY

Amendments to §§141.1 - 141.3, 141.5 - 141.7, 141.10, 141.11, 141.13 - 141.17, 141.20, 141.21, 141.25 - 141.27, 141.29 - 141.33, 141.36, 141.37, 141.40, 141.50, 141.51, 141.53 - 141.55, 141.60 - 141.62, and 141.64 - 141.66 reflect changes to the Occupations Code, Chapter 455 due to recent legisla-

tion. The amendments are necessary in order to change the terms "registration, registered, certificate of registration, and registrant" to "license, licensed, and licensee."

Amendments to §141.1 add a definition for the commissioner of the Department of State Health Services (department), reflect the change in agency name, and include the use of lubricants, jacuzzi, sauna, and steam baths in the definition of massage therapy. New §141.1(10) adds a definition for licensee. This section has been renumbered to reflect deletions and insertions.

Amendments to §141.2 reflect the change in agency name, remove language regarding application fees for a one-year license due to House Bill 2292, 78th Legislature, Regular Session (2003), and remove language regarding fees for the written examination review. New language §142.2(e)(4)(A) and (B) requires massage therapy educational programs to pay late renewal fees to align the fee structure with standard licensing agency practices.

Amendments to §141.3 delete the reference to temporary registration, and changes "letter of approval for examination" to "notice of approval for examination" to allow for electronic notification.

Amendments to §141.5(t) require licensees to cooperate during the investigation of a complaint.

Amendments to §141.6 prohibit the practice of massage therapy or other massage services while partially nude.

Amendments to §141.10 require applicants for licensure to be at least 18 years of age.

Amendments to §141.11 delete the requirement that applications must be submitted by established deadlines.

Section 141.12 (relating to the issuance of a temporary registration) is repealed in accordance with House Bill 2696 of the 79th Regular Legislative Session.

Amendments to §141.13 require applicants for licensure to be at least 18 years of age and reflect that a licensee is licensed by the department.

Amendments to §141.14 delete references to the temporary registration, require an applicant to submit a new application and begin the examination process again if the applicant has not passed both the written and practical examination within one year of being approved for examination, and clarify that only the videotape from the practical exam may be reviewed by the candidate. New §141.14(b) requires the applicant to pass the written examination before they are eligible to sit for the practical exam unless the applicant requires the examination in a language other than English or an interpreter is needed.

Amendments to §141.24 remove language regarding one-year approvals for continuing education providers.

New §141.32(h) and (i) require massage therapy educational programs to pay late renewal fees to align the fee structure with standard licensing practices.

Amendments to §141.34(j) clarify that students may only complete 50 hours of internship before they are required to be licensed in accordance with Occupations Code, §453.053(7), relating to massage schools.

Amendments to §141.37 reflect the agency name change. New §141.37(a)(16)(B) requires massage therapy education programs to inform prospective students that a person is ineligible for licensure until the fifth anniversary of a conviction for a misdemeanor involving moral turpitude or a felony.

Amendments to §141.50 require businesses that advertise or offer other massage services to be licensed.

Amendments to §141.51(i) prohibit a massage establishment from employing an individual who is not a United States citizen or legal permanent resident, employing a minor without parental consent, allowing a nude or partially nude employee to practice massage therapy or other massage services, allowing employees to engage in sexual contact, or allowing employees to wear clothing that is designed to arouse or gratify a sexual desire. New §141.51(j) requires massage therapy establishments to maintain and secure client intake forms, billing records, and session notes and to make them available at the department's request. New §141.51(k) defines "nude" and "sexual contact."

Amendments to §141.54 exclude the office of an occupational therapist from licensure requirements, and add an exemption for the practice of other massage services.

New §141.55(e) requires massage establishments to obtain a new license if the location of the establishment changes.

Amendments to §141.62 change "board" to "executive commissioner" to reflect that the executive commissioner adopts rules.

Amendments to §141.64 replace "board" with "department" to clarify that the department is responsible for implementing terms of final court or attorney general orders and that the department may not modify, remand, reverse, vacate, or stay a court or attorney general's order to suspend a license for failure to pay child support.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §141.34(j), which sets the maximum number of hours a student can earn in an internship before being required to obtain licensure, 155 identically worded comments were received from persons in the San Antonio area objecting to the limitation on hours as punitive and saying "more hands-on practice in a controlled, supervised, school setting can only serve to better equip the student and better protect the public."

Response: The commission disagrees because requiring the same length of internship for all applicants for licensure is not punitive if all applicants receive the identical amount of training. Additional internship hours may be offered for professional development or through continuing education activities, separately from licensing requirements. No change was made to the rule as a result of these comments.

Comment: Concerning §141.34(j), which sets the maximum number of hours a student can earn in an internship before being required to obtain licensure, one commenter supported the change.

Response: The commission thanks the commenter. No change was made to the rule as a result of this comment.

Comment: Concerning exemptions from the provisions of Occupations Code, Chapter 455, which are also located in current

§141.54(a)(4) hotel or motel, (6) health spa, (11) beauty shop, and (12) barbershop, one commenter opposes the exemptions and provided specific rule amendment recommendations.

Response: The commission does not disagree with the commenter. The proposed changes suggested by the commenter would require substantive changes to the proposed rules that were published for comment. Due to the number of stakeholders who would be impacted by such a change, republication of the proposed rules for an additional comment period would be required. Additionally, the department is currently working with the Honorable Representative Anchia and various other stakeholders to address the commenter's concerns. Proposed rules concerning the exemptions will be published at a later date after the proposal has received appropriate input from all stakeholders. No change was made to the rule as a result of this comment.

Comment: One commenter stated that the administrative rules should contain a comprehensive definition of "other massage services".

Response: The commission disagrees because §141.1 of the current rules states that "words and terms defined in the Occupations Code, Chapter 455, shall have the same meaning in this chapter as assigned in the Act." "Other massage services" is adequately defined in the Occupations Code, Chapter 455, and, therefore, does not need to be defined or redefined by rule. No change was made to the rule as a result of this comment.

Comment: One commenter believes that Texas has a legal age requirement of 18 or older to consent for medical treatment and is concerned that the proposed rules allow a person that is 17 years of age or older to procure massage services without parental or guardian consent.

Response: The commission disagrees because massage therapy constitutes a healthcare service when the massage is for therapeutic purposes. The proposed rules do not negate a licensed massage therapist's requirements to comply with other state laws; however, individuals who are at least 17 years of age may obtain massage services for relaxation without parental or guardian consent. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. THE DEPARTMENT

25 TAC §§141.1 - 141.3

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605496
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. CODE OF ETHICS

25 TAC §§141.5 - 141.7

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. MASSAGE THERAPISTS

25 TAC §§141.10, 141.11, 141.13 - 141.17

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and

human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200605498
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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25 TAC §141.12

STATUTORY AUTHORITY

The repeal is adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200605499
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. CONTINUING EDUCATION REQUIREMENTS AND DOCUMENTATION

25 TAC §§141.20, 141.21, 141.24, 141.25

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200605500
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. MASSAGE SCHOOLS AND MASSAGE THERAPY INSTRUCTORS

25 TAC §§141.26, 141.27, 141.29 - 141.34, 141.36, 141.37, 141.40

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605501
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. MASSAGE ESTABLISHMENTS

25 TAC §§141.50, 141.51, 141.53 - 141.55

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing

Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605502
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §§141.60 - 141.62, 141.64 - 141.66

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Texas Occupations Code, §455.051, which requires the Massage Therapy Licensing Program to adopt rules, with the approval of the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605503
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 26, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

28 TAC §§1.501, 1.503 - 1.509

The Commissioner of Insurance adopts amendments to §1.501 and new §§1.503 - 1.509, concerning the effect of criminal conduct on licenses. The amendments and new sections are adopted without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6165).

In conjunction with this adoption and also published in this issue of the *Texas Register*, the Department has adopted the repeal of existing §§19.1801 - 19.1807 (relating to Fingerprint Card Requirement for Applicants for License) and adopted amendments to existing §3.1703 (relating to the Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees), §5.6403 (relating to the Application for Initial Certificate of Approval for workers' compensation group self-insurance), §7.209 (relating to Form A, Insurance Holding Company System Regulatory Act), and §19.711 (relating to Fingerprint Requirement for licensing of public insurance adjusters).

The sections are necessary to identify those individuals regulated by the Department who are subject to state laws and the Department's rules regarding the consequences of prior criminal conduct and fraudulent and dishonest activity and to establish requirements and procedures for obtaining an individual's criminal history information by using the individual's fingerprints. Because the special nature of the relationship between licensees, insurance companies, other insurance-related entities and the public requires the public to place trust in and reliance upon such persons, the Department has determined that it is necessary to consider the individual's criminal history information when determining an individual's fitness for licensure or other authorization, including certification, permit, or registration, or for control of an entity holding or seeking a license or other authorization, including a certificate, permit, or registration.

The adoption is necessary to maintain effective regulation of the insurance industry by establishing requirements and procedures to further ensure that persons receiving licensure and authorizations, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold those positions. The adoption establishes a reasonable procedure and funding mechanism for the Department to obtain necessary information to make those determinations. This adoption does not impose additional requirements or costs on individuals to maintain their current licenses or authorizations and thus should not affect the current license or authorization status of any person who has made a full disclosure of all past criminal conduct.

The Texas statutes applicable to the individuals affected by this adoption require the Department to determine those individuals' fitness for holding a license or authorization, or those individuals' fitness to control an entity holding or seeking a license or authorization. Additionally, the federal Violent Crime Control and Law Enforcement Act of 1994, specifically 18 U.S.C. §1033 and §1034, prohibits an individual who has ever been convicted of a state or federal felony involving dishonesty or breach of trust from engaging in the business of insurance unless the individ-

ual is specifically authorized to do so by an insurance regulatory official. Because the applicable state statutes do not specify the method of inquiry regarding the determination of an individual's fitness, the Department has the discretion to determine the method.

The Department has determined that the use of criminal history information is the best means to assist the Department in performing this statutory duty. Additionally, to assist the Department in determining an individual's fitness, the Legislature enacted Insurance Code §801.056 and §4001.103 authorizing the Department to require applicants for any license or authorization issued by the Department to submit fingerprints and Government Code §411.106 and §411.087 authorizing access to an applicant's criminal history information from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI).

The adopted sections set forth a secure and uniform procedure by which the Department may obtain a complete criminal history from individuals applying for a license or authorization and from individuals who are seeking to be associated with a regulated entity. Under the adoption, the Commissioner may waive the fingerprinting requirement in response to Texas statutes related to non-resident licensing, the federal Gramm-Leach-Bliley Act, and the possibility that other state insurance departments may adopt similar background checks for their resident licensees and authorized individuals. The adoption, however, does not allow waiver of the requirement for persons subject to background checks by other entities, such as the National Association of Securities Dealers. Such an exception could create a dual standard for individuals, particularly among Texas residents. Additionally, licensees of these other entities may not be subject to 18 U.S.C. §1033 and §1034. Federal law, or possibly state law, depending on the source of the information, could also prohibit those entities from sharing an individual's criminal history information contained in their files. The adoption does not require any individual to be fingerprinted or pay fingerprint-processing fees for renewing an existing license or authorization.

The Department has consulted with the DPS and determined that fingerprint checks, and in particular electronic fingerprint checks, provide the most effective method of identifying an individual and obtaining that individual's criminal history information. Improvements in electronic fingerprint technology have increased the accuracy of fingerprint capture and substantially reduced the time frame for processing the fingerprint to obtain the criminal history information.

The adopted procedure requires affected individuals to be fingerprinted by an acceptable vendor and pay the associated fingerprint processing fees charged by the DPS and FBI. The individual's fingerprints will either be submitted directly to the DPS, if captured by the DPS electronic vendor, or to the Department and then to the DPS if captured on paper. The associated fingerprint-processing fee charged by the DPS is set by Government Code §411.088(a)(2). The associated fingerprint-processing fee charged by the FBI is set by federal authority and is made known to the Department by the DPS. The Department understands from the DPS that all fingerprints will be processed through both the DPS and FBI.

Another factor considered by the Department in adopting these requirements and procedures is that the cost be reasonable and not unduly burdensome for an individual seeking a license or authorization. It is the Department's position that the total costs for fingerprinting and fingerprint processing, which are estimated to range from $48.95 to $56 per individual, meet this criteria. These costs are in line with, or less than, those costs in other states. For example, California requires a $76 fee; Florida requires a $64 fee; and Idaho requires a $60 fee. The adoption does not restrict individuals or their sponsors from making arrangements with an acceptable vendor or the DPS to facilitate the fingerprint collection process.

The Department is implementing this fingerprint identification process using both DPS and FBI resources for the following three reasons. The process will prevent individuals with a criminal history in another state from attempting to evade detection by simply moving to Texas. Fingerprint collection by an acceptable vendor allows for accurate verification of the identity of the individual being fingerprinted and increases confidence in the review process. Finally, fingerprints are the only method the FBI will accept to produce identity and criminal history information.

In conjunction with this adoption and also published in this issue of the *Texas Register*, the Department has adopted the repeal of existing §§19.1801 - 19.1807 (relating to Fingerprint Card Requirement for Applicants for License) and adopted amendments to existing §3.1703 (relating to the Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees), §5.6403 (relating to the Application for Initial Certificate of Approval for workers' compensation group self-insurance), §7.209 (relating to Form A, Insurance Holding Company System Regulatory Act), and §19.711 (relating to Fingerprint Requirement for licensing of public insurance adjusters). The repeal and the amendments are necessary to conform existing fingerprint requirements to the new requirements set forth in this rule.

In the proposal the Department also solicited comments as to whether having the amendment and new sections become effective no earlier than 90 days following the date the amendment and new sections were adopted by the Commissioner was a viable effective date. The Department received no comments concerning the effective date and thus considers that the 90 day time period for implementation is adequate. The Department also considers a date certain to be the most effective means for determining when individuals will be required to comply with the new fingerprint requirements, and therefore, the Department has determined that the amendments to §1.501 and new §§1.503 - 1.509 set forth in this adoption shall be effective January 1, 2007.

The adopted amendment to §1.501(a) incorporates the establishment of the procedure for obtaining criminal history information into the purpose of the subchapter. The amendment to §1.501(b) clarifies and, to the extent necessary, adds types of authorizations, insurers and related entities subject to the applicability of §1.502 (relating to guidelines for licensing persons with criminal backgrounds), including workers' compensation related authorizations under Insurance Code Chapter 1305 and workers' compensation self-insurance groups under Labor Code Chapter 407A. Additionally, the amendment to §1.501(b) updates Insurance Code references in the list of affected license, authorization, certificate, permit, or registration types to reflect the new section numbers adopted as a result of the Legislature's enactment of the non-substantive Insurance Code revision and arranges this list of references in numerical order. New §1.503 specifies those individuals subject to the new fingerprint requirement in §1.504. New §1.504 sets forth the requirement to submit fingerprints and pay fees and provides exemptions to this requirement. New §1.505 addresses Insurance Code §4056.055 and §4101.004 reciprocal licensing

provisions for nonresident agents and adjusters by providing that the Commissioner may waive the fingerprint requirement for nonresident individuals holding a license in their state of residence. New §1.506 authorizes the Commissioner to waive the fingerprint requirement for individuals if the individual, or the insurance carrier or related entity with which the individual is associated, is not domiciled in Texas. New §1.507 relates to licenses and authorizations not listed in §1.505 and §1.506 and authorizes the Commissioner to waive the fingerprint requirement for individuals if the individual, or the entity with which the individual is associated, is not domiciled in Texas. New §1.508 states how the Department will use the fingerprints and identifies certain state and federal confidentiality laws that apply to the Department's use and maintenance of criminal history information. New §1.509 identifies the entities that are authorized to capture an individual's fingerprints; addresses how fingerprints will be submitted and the method for the payment of DPS and FBI fingerprint processing fees when captured by the electronic vendor acceptable to the DPS, the Department's examination vendor, or a criminal law enforcement agency; requires all fingerprint impressions to be legible and suitable for use by the DPS and FBI; specifies that fingerprints must be submitted within the time frame indicated on the appropriate application or biographical submission forms and allows for certain extensions; and provides that the application or biographical submission is not complete until the criminal history information is received.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

General: A commenter asked concerning the Department's statutory authority to expand the collection of fingerprints by rule.

Agency Response: The Legislature enacted Insurance Code §801.056 and §4001.103 authorizing the Department to require applicants for any license or authorization issued by the Department to submit fingerprints and as such this rule is not an expansion of authority but only a procedure for collecting those fingerprints.

General: A commenter appreciated the Department's adoption of electronic procedures and encouraged the Department to adopt further technological applications, including electronic licensing applications.

Agency Response: The Department currently does accept electronic license applications through both SIRCON Corporation and the National Insurance Producer Registry (NIPR) from nonresident applicants who hold a current license in their home state and who are applying for a reciprocal Texas license based on Insurance Code Chapter 4056. The Department is reviewing the process of accepting electronic applications from applicants requiring a licensing examination.

§1.503: A commenter asked why the Department is not following the NAIC Authorization for Criminal History Record Check Model Act that did not include a requirement for insurance company officers.

Agency Response: The NAIC model act is primarily designed for states that currently do not have fingerprint authorizations. The Texas Legislature enacted Insurance Code Article 1.10C in 1991, which was revised and re-adopted in part as §801.056 by the 77th Legislature in 2001. Further the Department has collected fingerprints on insurance company officers and directors since 28 Texas Administrative Code §7.209 became effective in May, 2002.

§§1.503, 1.504 and 1.506: A commenter expressed concern that the proposal could require insurance companies to submit information on officers and directors that have little if any relationship to Texas. As such, the commenter suggested a change to limit the fingerprinting requirement to officers and directors of Texas domestic carriers as a less onerous requirement for some insurers.

Agency Response: As stated in §1.503(3) and §1.504(a), this rule does not create a general requirement for all insurance company officers, directors and controlling shareholders to submit fingerprints. Rather the fingerprint requirement is limited to those officers, directors, and controlling shareholders that are otherwise required to submit biographical information to the Department. Further, the adopted procedure is intended to reduce the burden on individuals because, as stated in §1.504(b)(1), as long as the fingerprinted individual maintains his active association, the individual can continue to be involved in the industry without having to make repetitive routine fingerprint filings with the Department. With respect to insurers not domiciled in Texas, those insurers subject to this rule will have made a choice to do business in Texas. The legislature has authorized the Department to collect fingerprints under Insurance Code §801.056 as the Department determines to be necessary to fulfill its statutory obligation under Chapters 801, 822, 823, 841, 843, 844, 846, 2551, and 2552 in determining the fitness of insurance company officers, directors and controlling shareholders that are engaging in the insurance business in Texas even though these entities may also be subject to primary regulation in another state. Additionally, §1.506 authorizes the Commissioner to waive the fingerprint requirement for individuals associated with insurers that are not domiciled in Texas. As such, it is the Department's position that these provisions are sufficient to address the commenter's concerns and the Department declines to include such a restriction in this rule.

§1.504: Commenters asked if individuals who have previously submitted fingerprints or have active licenses or associations will be required to submit additional fingerprints under §1.504.

Agency Response: While the rule does maintain the Department's statutory authorization in Insurance Code §801.056 and §4001.103 to request fingerprints from any individual applicant, the proposal excepts those individuals who have active associations and licenses from the routine practice of collecting fingerprints. Further, individuals with active licenses who have submitted fingerprints would not be required to submit additional fingerprints for a new application in a different line. An individual who has allowed all their licenses to fully expire beyond any renewal periods and/or discontinued all their associations would be required to submit a new set of fingerprints upon application for a new license or a new association with an entity.

§1.509: A commenter asked if it can collect fingerprints at an insurance company or agency if its personnel have training from the Department of Public Safety.

Agency Response: Section 1.509 specifies the types of acceptable vendors. The Department of Public Safety and its vendor will determine if an insurance company or agency may subcontract with the Department of Public Safety vendor or make other arrangements with that vendor for submitting fingerprints.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Primerica.

For with Changes or Questions: Independent Insurance Agents of Texas, State Farm, and USAA.

Against: None.

The amendments and new sections are adopted under the Occupations Code, Government Code, Labor Code, and Insurance Code. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Labor Code §407A.051 authorizes the Commissioner to establish application requirements for self-insured workers' compensation groups. Labor Code §407A.008 authorizes the Commissioner to adopt rules to implement Labor Code Chapter 407A. Insurance Code §801.056 authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Insurance Code §§801.101, 801.102, and 801.151 - 801.155 authorize the Commissioner to review the fitness and reputation of officers, directors and persons in control of insurance companies and to refuse or revoke a certificate of authority to any company based on a determination that such officer, director or controlling person is not worthy of public confidence. Insurance Code §822.060 authorizes the Commissioner to deny the charter of an insurance company if the Commissioner determines that proposed officers, directors, attorney in fact or managing head of the company lack sufficient standing and good record to make success of the proposed company probable. Insurance Code §823.052(b)(2) requires an insurer's registration statement to contain current information about ownership and management of the insurer, the insurer's holding company, and, if the Commissioner considers the information necessary, any of the insurer's other affiliates. Insurance Code §823.053(a) requires the insurer to report each material change to information disclosed in a registration statement, including additional information. Insurance Code §823.157 authorizes the Commissioner to deny the acquisition or change of control of an insurer if the Commissioner determines that due to a lack of trustworthiness or integrity of the persons who would control the operations of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer's policyholders and the public. Insurance Code §841.061 authorizes the Commissioner to deny the charter of a life, accident, or health insurance company if the Commissioner determines that the proposed officers, directors, or managing executive of the company lack sufficient standing to make success of the proposed company probable. Insurance Code §843.082 authorizes the Commissioner to deny a certificate to a health maintenance organization if the Commissioner determines that the person responsible for the conduct of the affairs of the applicant is not competent, trustworthy, and of good reputation. Insurance Code §844.052 establishes that nonprofit corporations seeking a certificate under Insurance Code Chapter 844 must meet the same requirements for the issuance of a certificate of authority that a health maintenance organization is required to meet under Insurance Code Chapter 843. Insurance Code §846.003 subjects a multiple employer welfare arrangement to Insurance Code Chapter 801, and under Insurance Code §846.058, a multiple employer welfare arrangement, each board member and officer of the arrangement, and any agent or other person associated with the arrangement is subject to disqualification for eligibility for a certificate of authority if the person is prohibited from serving in any capacity with the arrangement under §411, Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111). Insurance Code §2551.001 subjects title insurance companies to Insurance Code Chapter 801, which in §801.056 authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Insurance Code §2552.003 subjects attorney's title insurance companies to the same provisions that apply to title insurance companies. Insurance Code §§2651.301 and 2652.201 authorize the Commissioner to deny or revoke the license of a title insurance agent or direct operation, or escrow officer if the person has been found guilty of fraudulent or dishonest practices. Insurance Code §4001.002(a) provides that, except as otherwise provided by the Insurance Code, the provisions of Insurance Code Title 13 apply to the persons licensed under the provisions listed in §4001.002(a). Insurance Code §4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Title 13. Insurance Code §4001.102(b) authorizes the Commissioner to prescribe by rule the requirements for a properly completed application. Insurance Code §4001.103 also authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit or other authorization issued by the Department to engage in a regulated activity under Insurance Code Title 13. Insurance Code §4005.101 provides that the Department may deny or revoke a license to an individual licensed under Insurance Code Title 13, if that individual has been convicted of a felony or has engaged in fraudulent or dishonest activities. Insurance Code license types within the scope of Insurance Code Title 13 under Insurance Code §4001.002(b) include: surplus lines agent, §981.202; general property and casualty agent, §4051.051; limited property and casualty agent, §4051.101; insurance service representative, §4051.151; county mutual agent, §4051.201; agricultural agent, §4051.251; full-time home office employee, §4051.301; life and health insurance counselor, Chapter 4052; managing general agent, Chapter 4053; general life, accident, and heath agent, §4054.051; limited life, accident, and health agent, §4054.101; funeral prearrangement life insurance agent, §4054.151; life insurance not exceeding $15,000 agent, §4054.201; nonresident agent applicants, Chapter 4056; adjuster, Chapter 4101; public insurance adjuster, Chapter 4102; reinsurance intermediary manager and broker, Chapter 4152; and risk manager, Chapter 4153. Further, for a partnership or corporation applying for an agent's license, Insurance Code §4001.106(b)(7)(B) and §4001.253(c) require the Department to find that the applicant's officers, directors, partners and other persons with a right to control the applicant have not committed an act for which licensure can be denied or revoked under

Chapter 4005. Additionally, Insurance Code §4052.003 states that life and health insurance counselors are subject to the same licensing requirements as are applicable to agents under the Insurance Code. Insurance Code §4101.052(a)(2) authorizes the Department to make reasonable inquiries into an adjuster's personal history. Insurance Code §4101.053(a)(2)(D) requires the Department to determine that an adjuster is trustworthy and §4101.201 authorizes the Department to revoke or deny an adjuster license application under the applicable insurance laws of this state, which includes Chapter 4005. Insurance Code §4101.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Chapter 4101. Insurance Code §4102.053(a)(5) and (b), and §4102.054(5) require the Department to restrict or deny issuance of a public insurance adjuster license to a resident or nonresident individual based on a felony conviction. Further, for a partnership or corporation applying for a public insurance adjuster license, §4102.055(b) and §4102.056(b) authorize the Commissioner to adopt rules analogous to the provisions of Chapter 4001 concerning the licensure of business entities organized under Texas law and business entities organized under the laws of another state. In addition to the provisions of Chapter 4001 previously listed concerning agent licensure, the Department has adopted §19.704(b)(7) and (i) of this title (relating to Public Insurance Adjuster Licensing) which require the Department to find that a public insurance adjuster license applicant's officers, directors, partners and other persons with a right to control the applicant have not committed an act for which licensure can be denied or revoked under Insurance Code Chapters 4005 and 4102. Insurance Code §4102.201 authorizes the Department to revoke or deny issuing a public insurance adjuster license based on a felony conviction or engagement in fraudulent or dishonest activities. Insurance Code §4102.004 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4102. Insurance Code Article 21.58A §3(b) and §13 authorize the Commissioner to adopt rules relating to the certification of utilization review agents. Insurance Code Article 21.58C §2(a) authorizes the Commissioner to adopt rules relating to the certification of independent review organizations. Insurance Code §1111.005(a)(1), (5) and (8) provide that the Commissioner may deny or revoke a viatical and life settlement registration if the Commissioner finds the applicant or registrant, individually or through any officer, director, or shareholder of the applicant or registrant, has been convicted of a felony or has been convicted of a misdemeanor involving moral turpitude or fraud. Insurance Code §1111.003(a) authorizes the Commissioner to adopt rules relating to viatical and life settlements. Insurance Code §1305.053(2) authorizes the Commissioner to consider the fitness and reputation of each officer or director or other person having control of a workers' compensation health care network. Insurance Code §1305.102(d) authorizes the Commissioner to consider a workers' compensation management contractor's prior criminal history before approving the contract. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
SUBCHAPTER R. VIATICAL AND LIFE SETTLEMENTS

28 TAC §3.1703

The Commissioner of Insurance adopts an amendment to §3.1703(q), concerning the fingerprint requirement for viatical and life settlement registration certificate applicants. The amendment is adopted without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6173).

The adopted amendment is necessary to conform the existing fingerprint requirement for individuals applying for a viatical and life settlement registration certificate, including viatical and life settlement providers, provider representatives, and brokers, with the new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*.

In the proposal the Department solicited comments as to whether having the amendment become effective no earlier than 90 days following the date the amendment is adopted by the Commissioner was a viable effective date. The Department received no comments concerning the effective date and thus considers that the 90 day time period for implementation is adequate. The Department also considers a date certain to be the most effective means for determining when individuals will be required to comply with the new fingerprint requirements, and therefore, the Department has determined that this amendment shall be effective January 1, 2007, the same date on which the new fingerprint requirements adopted in amended §1.501 and new §§1.503 - 1.509 become effective.

The adopted amendment requires individuals applying for a viatical and life settlement registration certificate, including viatical and life settlement providers, provider representatives, and brokers, to comply with the new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*.

The Department did not receive any comments on the proposed amendment.

The amendment is adopted under the Occupations Code Chapter 53; Government Code Chapter 411; and Insurance Code Chapters 801, 1111, and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from

the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Insurance Code §801.056 authorizes the Department to request that applicants, including the applicant's corporate officers, provide a complete set of fingerprints for a certificate of registration issued by the Department. Section 1111.003 authorizes the Commissioner to adopt reasonable rules governing the registration of persons engaged in the business of viatical and life settlements. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE
DIVISION 2. GROUP SELF-INSURANCE COVERAGE

28 TAC §5.6403

The Commissioner of Insurance adopts an amendment to §5.6403(f), concerning the fingerprint requirement for the trustees of a self-insured workers' compensation group and officers of the administrator and of any service company. The amendment is adopted without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6174).

The adopted amendment is necessary to conform the existing fingerprint requirement for individuals regulated under §5.6403(f), including each member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer and controller of the administrator and any service company, with a new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509. Additionally, adopted amendments to §1.501 clarify that individuals regulated under §5.6403(f) are subject to existing §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds). Adopted amended §1.501 and new §§1.503 - 1.509 are also published in this issue of the *Texas Register*.

In the proposal the Department solicited comments as to whether having the amendment become effective no earlier than 90 days following the date the amendment is adopted by the Commissioner was a viable effective date. The Department received no comments concerning the effective date and thus considers that the 90 day time period for implementation is adequate. The Department also considers a date certain to be the most effective means for determining when individuals will be required to comply with the new fingerprint requirements, and therefore, the Department has determined that this amendment shall be effective January 1, 2007, the same date on which the new fingerprint requirements adopted in amended §1.501 and new §§1.503 - 1.509 become effective.

The adopted amendment requires individuals regulated under §5.6403(f), including each member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer and controller of the administrator and any service company, to comply with the new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*.

The Department did not receive any comments on the proposed amendment.

The amendment is adopted under the Occupations Code Chapter 53; Government Code Chapter 411; Labor Code Chapter 407A; and Insurance Code Chapters 801 and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Labor Code §407A.051 authorizes the Commissioner to establish application requirements for self-insured workers' compensation groups. Labor Code §407A.008 authorizes the Commissioner to adopt rules to implement Labor Code Chapter 407A. Insurance Code §801.056 authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION
SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

28 TAC §7.209

The Commissioner of Insurance adopts an amendment to §7.209(d), concerning the fingerprint requirement for insurance company individuals and officers in connection with Form A filings. Form A is a statement regarding the acquisition or change of control of a domestic insurer. The amendment is adopted without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6176).

The adopted amendment is necessary to conform the existing fingerprint requirement for individuals regulated under §7.209(d), including individual applicants or persons who are the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, with a new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509. Additionally, adopted amendments to §1.501 clarify that individuals regulated under §7.209(d) are subject to existing §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds). The adopted amendments to §1.501 and adopted new §§1.503 - 1.509 are also published in this issue of the *Texas Register*. The adopted amendment to §7.209(d) also changes the initial letters of the titles specified in subsection (d)(2) to lower case; this nonsubstantive revision is necessary for purposes of grammatical consistency.

In the proposal, the Department solicited comments as to whether having the amendment become effective no earlier than 90 days following the date the amendment is adopted by the Commissioner was a viable effective date. The Department received no comments concerning the effective date and thus considers that the 90 day time period for implementation is adequate. The Department also considers a date certain to be the most effective means for determining when individuals will be required to comply with the new fingerprint requirements, and therefore, the Department has determined that this amendment shall be effective January 1, 2007, the same date on which the new fingerprint requirements adopted in amended §1.501 and new §§1.503 - 1.509 become effective.

The adopted amendment requires individuals regulated under §7.209(d), including individual applicants or persons who are the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, to comply with the new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*.

The Department did not receive any comments on the proposed amendment.

The amendment is adopted under the Occupations Code Chapter 53; Government Code Chapter 411; and Insurance Code Chapters 801, 823, and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Insurance Code §801.056 authorizes the Department to request a complete set of fingerprints from an insurance carrier applicant, or the applicant insurance company's corporate officers. Insurance Code §823.157 authorizes the Commissioner to deny the acquisition or change of control of an insurer if the Commissioner determines that due to a lack of trustworthiness or integrity of the persons who would control the operations of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer' policyholders and the public. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS

28 TAC §19.711

The Commissioner of Insurance adopts an amendment to §19.711, concerning the fingerprint requirement for public insurance adjuster license applicants and other individuals required to file biographical information in connection with a public insurance adjuster license. The amendment is adopted without changes to the proposed text as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6178).

The adopted amendment is necessary to conform the existing fingerprint requirement for such individuals with the new fingerprint submission requirement that the Department is adopting in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*. The adopted amend-

ment to §19.711 is also necessary to change the Insurance Code reference in this section from Article 21.07-5 to Chapter 4102 in accordance with the nonsubstantive revision of the Insurance Code enacted by the 79th Legislature, effective September 1, 2005. In the proposal, the Department solicited comments as to whether having the amendment become effective no earlier than 90 days following the date the amendment is adopted by the Commissioner was a viable effective date. The Department received no comments concerning the effective date and thus considers that the 90 day time period for implementation is adequate. The Department also considers a date certain to be the most effective means for determining when individuals will be required to comply with the new fingerprint requirements, and therefore, the Department has determined that this amendment shall be effective January 1, 2007, the same date on which the new fingerprint requirements adopted in amended §1.501 and new §§1.503 - 1.509 become effective.

The amended §19.711 requires public insurance adjuster license applicants and other individuals required to file biographical information in connection with a public insurance adjuster license to comply with the new fingerprint requirement in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*.

The Department did not receive any comments on the proposed amendment.

The amendment is adopted under the Occupations Code Chapter 53; Government Code Chapter 411 and the Insurance Code Chapters 4001, 4102, and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §411.083 and §411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Insurance Code §4001.103 authorizes the Department to request a complete set of fingerprints from an applicant for a license issued under Insurance Code Title 13. Insurance Code §4102.053(a)(11) and §4102.054(a)(12) authorize the Department to request a complete set of fingerprints from resident and nonresident public insurance adjuster license applicants. Further, for a partnership or corporation applying for, or maintaining, a public insurance adjuster license, Insurance Code §4102.055(b) and §4102.056(b) authorize the Commissioner to adopt rules analogous to the provisions of Insurance Code Chapter 4001 concerning the licensure of any business entity organized under the laws of Texas and any business entity organized under the laws of another state. The Department has adopted §19.704(c)(7) and (i) of this title (relating to Public Insurance Adjuster Licensing) which require the Department to find that the public insurance adjuster license applicant's officers, directors, partners, and other persons with a right to control the licensee have not committed an act for which licensure can be denied or revoked under Insurance Code Chapters 4005 and 4102. Insurance Code §4102.004 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4102. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 3, 2006.

TRD-200605417
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: October 23, 2006
Proposal publication date: August 4, 2006
For further information, please call: (512) 463-6327

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SUBCHAPTER S. FINGERPRINT CARD REQUIREMENT FOR APPLICANTS FOR LICENSE

28 TAC §§19.1801 - 19.1807

The Commissioner of Insurance adopts the repeal of Subchapter S, §§19.1801 - 19.1807, concerning fingerprint requirements for applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. The repeal is adopted without changes to the proposal as published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6180).

The repeal is necessary because the Department is adopting new fingerprint submission requirements in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*. In the proposal the Department solicited comments as to whether having the repeal become effective no earlier than 90 days following the date the repeal is adopted by the Commissioner was a viable effective date. The Department received no comments concerning the effective date and thus considers that the 90 day time period for implementation is adequate. The Department also considers a date certain to be the most effective means for determining when individuals will be required to comply with the new fingerprint requirements, and therefore, the Department has determined that this repeal shall be effective January 1, 2007, the same date on which the new fingerprint requirements adopted in amended §1.501 and new §§1.503 - 1.509 become effective.

The repeal of these sections will allow the Department to implement a new fingerprint requirement being adopted by the Department in amended §1.501 and new §§1.503 - 1.509, which are also published in this issue of the *Texas Register*.

The Department did not receive any comments on the proposed repeal.

The repeal of Subchapter S, §§19.1801 - 19.1807, is adopted pursuant to the Insurance Code §§801.056, 4001.103, 4001.005, and 36.001. Section 801.056 authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Section 4001.103 authorizes the Department

to request a complete set of fingerprints from any applicant for any authorization, including a license or permit, issued under Insurance Code Title 13. Section 4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Title 13. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

The Texas Commission on Environmental Quality (commission) adopts amendments to §§101.302, 101.306, 101.372, 101.373, 101.376, and 101.378; new §§101.305, 101.338, 101.339, and 101.375; and the repeal of §101.338. The commission adopts §§101.302, 101.305, 101.338, 101.339, 101.372, 101.375, and 101.376 *with changes* to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3492). The commission adopts §§101.306, 101.373, and 101.378 and the repeal of §101.338 *without changes* to the proposed text, and they will not be republished.

The repealed, new, and amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas State Implementation Plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Emissions Banking and Trading Program (EBTP) has been designed to offer flexibility and provide a market-based method of meeting required emission reductions. The program makes use of several types of emission credits including emission reduction credits (ERCs), mobile emission reduction credits (MERCs), discrete emission reduction credits (DERCs), and mobile discrete emission reduction credits (MDERCs). Flexibility has been built into the rules to create incentives for the early or permanent retirement of volatile organic compounds (VOC) and nitrogen oxides (NO_x) emissions credits.

In the October 5, 2005, edition of the *Federal Register* (70 FR 58154), the EPA published the proposed conditional approval of the DERC program as part of the SIP. The conditional approval was based on the commission submitting corrected program deficiencies to the EPA by December 1, 2006. These revisions address the deficiencies, which the commission committed to correct in a letter to the EPA dated September 8, 2005.

The corrections include the prohibition of the future generation of DERCs from permanent shutdowns and allow only DERCs generated from permanent shutdowns before September 30, 2002, to remain available for use for no more than five years from the date of the commission's commitment letter. Any DERCs generated after September 30, 2002, would be removed from the DERC registry and not be available for use. The conditions also required revisions to §101.302(f) and §101.372(f)(7) and (8) to clarify that the EPA must approve individual transactions involving emission reductions generated in another state or nation as well as those transactions from one nonattainment area to another or from attainment counties into nonattainment areas. The amendments revise Chapter 101, Subchapter H, Emissions Banking and Trading, to include program audit and reporting requirements to satisfy the EPA's requirements for cap and trade programs. The requirements concerning program audits were not included in the EPA publication of conditional approval but were the subject of discussion between the commission and the EPA.

The conditions also required the change to Form DEC-1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC-1, Notice of Generation and Generator of Mobile Discrete Emission Credits; and Form DEC-2, Notice of Intent to Use Discrete Emission Credits, to include a waiver of the federal statute of limitations for generators and users of discrete emission credits. With the revision of these forms and adoption of the proposed rule changes, the commission will have corrected all identified deficiencies in the DERC program.

The adopted rules also reflect changes to the Texas Health and Safety Code (THSC), §382.0172(c). Senate Bill (SB) 784 was adopted by the 79th Legislature, 2005, and allows additional options for credit from emission reductions achieved outside of the United States. The revisions allow the commission greater flexibility in its ability to approve the substitution of emission reductions outside the United States that may be used to satisfy reduction or trading requirements.

SECTION BY SECTION DISCUSSION

§101.302. General Provisions.

The commission adopts administrative changes throughout the rules to conform with Texas Register requirements and agency guidelines.

In order to better organize similar rule requirements, the commission deletes §101.302(a)(2) and (f)(3) and relocates this language concerning emission creditable reductions occurring outside the United States to new §101.305, Emission Reductions Achieved Outside the United States.

The commission amends §101.302(d)(1)(C)(vi) to allow the rejection of an emission credit quantification protocol if the EPA objects to the protocol during a 45-day adequacy review period or if the EPA publishes in the *Federal Register* a disapproval of the protocol. This does not substantially affect the procedures to approve the quantification protocol. The commission has, and will continue, to work with the EPA to approve new quantification

protocols. This revision clarifies in the rule that the quantification protocols would not be approved if the EPA objects to them. To be consistent with the reorganization of requirements applicable to emission reductions outside the United States, the commission is deleting the reference to "nation" in §101.302(f)(1).

§101.305. Emission Reductions Achieved Outside the United States.

The new §101.305 combines the existing language concerning the use of emission reductions from outside the United States that is moved from §101.302(f)(3) and (a)(2) for better organization. Emission reductions in Mexico used under THSC, §382.0172(b), must be generated and used consistent with federal requirements which restrict the generation and use of ERCs to nonattainment areas. The revisions reflect the SB 784 change to THSC, §382.0172(c), which allows facilities to substitute emission reductions in criteria or precursor pollutants outside the United States if it is a reduction in an air contaminant for which the area, where the facility is located, has been designated as nonattainment, or if the reduction will result in a greater overall health benefit for the area. Should El Paso remain in nonattainment status, emission reductions and the generation of ERCs must meet federal requirements and are subject to EPA approval. If, as expected, El Paso is redesignated as an attainment area, the adopted rule change will allow beneficial emission reduction substitutions to continue as a result of reductions achieved in Ciudad Juárez without relating those emission reductions to the attainment status of El Paso.

In response to public comment, the commission is inserting a reference to precursors of criteria pollutants into §101.305(b) and substituting the word "and" for "if" in regard to reducing a criteria pollutant and its greater health benefit. The commission is substituting "Mexican" for "international" in §101.305(c) for greater specificity. The commission is also adding the EPA as an approving authority for the validity of creditable reductions.

The commission is moving the rules governing optional reductions to their own sections (§§101.305, 101.338, and 101.375) so that they may be considered separately by the EPA for approval into the SIP and will not delay approval of other portions of the EBTP.

§101.306. Emission Credit Use.

The amendment to §101.306(a)(5) modifies the section to be consistent with the allowed use of ERCs under §101.399, Allowance Banking and Trading. This revision is necessary because of a previous adoption of Chapter 101, Subchapter H, Division 6, Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program, and allows facilities to use ERCs as allowances under the highly-reactive volatile organic compound cap and trade program.

§101.338. Emission Reductions Achieved Outside the United States.

The existing §101.338 is repealed. The new §101.338 reflects the revisions to THSC, §382.0172(c) and provides the commission more discretion in approving the substitution of emission reductions achieved outside the United States for emissions from electric generating or grandfathered facilities. In response to public comment, the commission is inserting the phrase "to meet the allowance holding requirements of this division" in §101.338(a) and (b).

In response to public comment, the commission is inserting a reference to precursors of criteria pollutants into §101.338(b) and substituting the word "and" for "if" in regard to reducing a criteria pollutant and its greater health benefit. The commission is substituting "Mexican" for "international" in §101.338(c) for greater specificity. The commission is also adding the EPA as an approving authority for the validity of creditable reductions.

§101.339. Program Audits and Reports.

The new §101.339 includes program audit and report requirements for emission credit programs applicable to electric generating and grandfathered facilities. The section contains similar audit and report requirements as are applicable to the commission's other cap and trade programs. These requirements are used by the commission and the EPA to evaluate the effectiveness of the program and include reportable items such as effect on ozone attainment, number of allowances or credits traded, cost of allowances or credits, and number of allowances in each compliance account. In response to public comment, the commission is adding sulfur dioxide (SO_2) as a pollutant that is subject to program audit requirements because grandfathered facilities are required to hold SO_2 allowances.

§101.372. General Provisions.

In order to better organize similar rule requirements, the commission deletes §101.372(a)(2) and relocates this language concerning emission creditable reductions occurring outside the United States to new §101.375, Emission Reductions Achieved Outside the United States. The commission amends §101.372(d)(1)(C)(vi) to require the rejection of a quantification protocol if the EPA objects to the quantification protocol during the 45-day adequacy review period or if the EPA publishes in the *Federal Register* a disapproval of the quantification protocol. This does not substantially affect the procedures to approve the quantification protocol. This revision clarifies in the rule that the quantification protocols would not be approved if the EPA objects to them. The commission also removes language from this section concerning credits for emission reductions outside the United States and the options for applying them. This language, modified to be consistent with the changes to THSC, §382.0172(c), enacted under SB 784, is moved to the new §101.375 in order to be considered separately by the EPA for approval into the SIP and not delay approval of other portions of the EBTP. In response to public comment, the commission is removing the reference to credits for emission reductions in other nations in §101.372(f)(7) and will use "emission reductions" instead.

§101.373. Discrete Emission Reduction Credit Generation and Certification.

The amendment to §101.373(a)(1) and (2) removes the ability to generate DERCs from facility shutdowns. The commission adopts this amendment in response to the *Federal Register* notice requiring the correction of program deficiencies prior to the approval of the EBTP into the SIP. The EPA has stated that banking and trading programs are intended to encourage innovative and creative emission reductions and shutdowns generally do not fall into this category. Shutdowns are also problematic for these programs because of the possibility that a facility may shut down in one area, generate and sell credits, but then relocate operations to other areas or states. Additionally, when activity level increases cause emission increases, mitigating reductions are typically not required. Thus, allowing the generation of tradable credits as a result of activity level decreases (includ-

ing shutdowns) may tend to promote emissions increases. Such patterns of activity related to shutdowns have the potential to interfere with attainment.

§101.375. Emission Reductions Achieved Outside the United States.

The new §101.375 relocates existing language concerning use of emission reductions from outside the United States in §101.372(a)(2) and (f)(8). The revisions reflect the SB 784 change to THSC, §382.0172(c), which allows facilities to substitute emission reductions in criteria or precursor pollutants outside the United States if it is a reduction in an air contaminant for which the area, where the facility is located, has been designated as nonattainment, or if the reduction will result in a greater overall health benefit for the area. This will allow the continuance of beneficial emission credit programs for reductions in Ciudad Juárez in the event of El Paso being reclassified as an attainment area.

The commission is moving the rules governing optional reductions to their own sections (§§101.305, 101.338, and 101.375) so that they may be considered separately by EPA for approval into the SIP and will not delay approval of other portions of the EBTP. In response to public comment, the commission is removing the reference to credits for emission reductions in §101.375(a) and will instead refer to the use of emission reductions in both §101.375(a) and (b).

In response to public comment, the commission is inserting a reference to precursors of criteria pollutants into §101.375(b) and substituting the word "and" for "if" in regard to reducing a criteria pollutant and its greater health benefit. The commission is substituting "Mexican" for "international" in §101.375(c) for greater specificity. The commission is also adding the EPA as an approving authority for the validity of creditable reductions.

§101.376. Discrete Emission Credit Use.

The commission is amending this section to refer only to §106.261 and §101.262 to update references due to previous rule changes.

§101.378. Discrete Emission Credit Banking and Trading.

The amendment to §101.378 changes the lifetime of DERCs generated from shutdowns. Companies that have previously certified DERCs from shutdowns will have no more than five years from the September 8, 2005, commitment letter to the EPA to use the DERCs. As a result, DERCs that were generated from shutdowns prior to September 30, 2002, are available for use until September 8, 2010. After that date, the DERCs generated from shutdowns before September 30, 2002, will be removed from the DERC registry and will no longer be available for use. DERCs generated from shutdowns after September 30, 2002, may not be used. The reason for this action is included in the discussion of changes to §101.373 in this preamble.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 101 and revisions to the SIP phase out DERCs generated from shutdowns prior to September 30, 2002, require removal of DERCs generated from shutdowns after September 30, 2002, from the DERC registry, implement the provisions of SB 784, reorganize various rules, correct one citation, specify the time the EPA has to object to quantification protocols, eliminate future generation of shutdown DERCs, and add a reference to the highly-reactive volatile organic compound cap and trade program. With the exception of the portions of the rulemaking regarding shutdown DERCs, the amendments to Chapter 101 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants; although, the underlying emissions banking and trading programs are intended to achieve these goals. The rulemaking provides flexibility regarding credits near the Texas - Mexico border by implementing SB 784 and makes various administrative changes. The changes to shutdown DERCs generation and use are adopted to bring the DERC program into compliance with EPA program requirements, allowing the DERC program to be approved as part of the SIP and to ensure air quality standards will be met. This rulemaking does not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the banking and trading program amendments were developed to implement the provisions of SB 784, limit the use of DERCs generated from shutdowns to bring the banking and trading program into compliance with federal requirements, and make several administrative changes. This rulemaking does not exceed an express requirement of federal or state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed under federal law and authorized under the THSC.

The rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the national ambient air quality standard (NAAQS) in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). It is true that the Federal Clean Air Act (FCAA) does require some specific measures for SIP purposes, such as the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC, §7410. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods to attain the NAAQS for the specific regions in the state. Even though

the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by SB 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As discussed earlier in this preamble, 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission contends that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of 42 USC, §7410. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are specifically required by federal law.

In addition, 42 USC, §7502(a)(2) requires attainment as expeditiously as practicable, and 42 USC, §7511(a), requires states to submit ozone attainment demonstration SIPs for ozone nonattainment areas such as the Houston - Galveston - Brazoria (HGB) area. The adopted rules, which will reduce ambient concentrations of ozone precursors in nonattainment areas, will be submitted to the EPA as one of several measures in the federally approved SIP. As discussed earlier in this preamble, the banking and trading scheme in the adopted rules is necessary to address some of the elevated criteria or precursor pollutant levels observed in various nonattainment areas in Texas; this scheme will result in reductions in criteria or precursor pollutants in nonattainment areas and help bring areas into compliance with the air quality standards established under federal law as NAAQS.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. The commission presumes that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485. 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990), *no writ*; *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000), *pet. denied*; and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

As discussed, this rulemaking action implements requirements of 42 USC, §7410. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is it adopted solely under the general powers of the agency. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382 (TCAA), and Texas Water Code that are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, 382.014, 382.016, and 382.017. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rulemaking does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The amendments to Chapter 101 and revisions to the SIP phase out DERCs generated from shutdowns prior to September 30, 2002, require removal of DERCs generated from shutdowns after September 30, 2002, from the DERC registry, implement the provisions of SB 784, reorganize various rules, specify the time the EPA has to object to quantification protocols, eliminate future generation of shutdown DERCs, and add a reference to the highly-reactive volatile organic compound cap and trade program. Specifically, the banking and trading program amendments in this adoption were developed to implement the provisions of SB 784, limit the use of DERCs generated from shutdowns to comply with federal requirements, and make several administrative changes. Promulgation and enforcement of the amendments will not burden private real property. The rules do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Additionally, the credits created under these rules are not property rights (§101.372(j)). Because DERCs are not property, phasing out shutdown DERCs does not constitute a taking. Consequently, this rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

Additionally, Texas Government Code, §2007.003(b)(4) provides that Chapter 2007 does not apply to this rulemaking action because it is reasonably taken to fulfill an obligation mandated by federal law. The changes regarding shutdown DERCs within this adoption were developed to meet the EPA conditional program approval so that these requirements can be approved into the SIP and used to meet NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. However, this rulemaking is only one step among many necessary for attaining the ozone NAAQS.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, the commission's rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as previous rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The new and amended sections are applicable requirements under the Federal Operating Permits Program, but no revisions to operating permits will be required.

PUBLIC COMMENT

The commission conducted a public hearing on this proposal in Austin on May 22, 2006. Vinson & Elkins, LLP on behalf of El Paso Electric Company (ELPE), EPA, Houston Regional Group of the Sierra Club (HSC), and Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP) submitted comments during the public comment period, which closed on May 30, 2006.

RESPONSE TO COMMENTS

TIP expresses general support for the proposal. The EPA expresses general support for these parts of the proposal as having met the conditions of the letter of commitment to address deficiencies in the banking program: §§101.302(d)(1)(C)(vi); 101.305; 101.306(a)(5); 101.372(d)(1)(C)(vi); 101.373; 101.375; 101.376(c)(4); and 101.378(b).

The EPA comments that the proposal preamble incorrectly refers to the EBTP as an open market program when it is more correctly referenced as a cap and trade program.

The commission agrees with this statement and is changing the preamble.

EPLE requests that the commission modify §101.302 to remove restrictions on which criteria pollutant reductions outside the United States may be creditable. ELPE states that SB 784 allows reductions in any criteria pollutant outside the United States that otherwise meets requirements for a creditable reduction (real, enforceable, quantifiable, permanent, and surplus), to be certified as a reduction for a different pollutant regardless of the surrounding area's attainment status with respect to either pollutant. EPLE requests that §101.302(f) be deleted or modified so that emission reductions outside the United States, but within 100 kilometers of the United States - Mexico border, are eligible for certification. ELPE suggests that §101.305 be modified to reference the certification of reductions outside the United States instead of their use.

The commission is not changing the rule in response to this comment. Section 101.302(a) and (c) reference the certification of emission reductions as emission credits. Section 101.305 and SB 784 only allow emission reductions generated outside of the United States to be used to satisfy applicable emission reduction requirements. Emission reductions generated outside of the United States may not be certified as credits, which may be banked and traded statewide. Under THSC, §382.0172(b), the use of emission reductions outside the United States is intended to provide air quality benefits to specific areas within the Texas - Mexico border area. A person using the reduction achieved in Mexico must have a specific use in mind. Additionally, emission reductions in Mexico used under THSC, §382.0172(b) must be applied consistent with federal requirements, which restrict the generation and use of ERCs to nonattainment areas.

The EPA comments that the change of "and" to "or" in §101.305 would allow reductions made in Mexico to be used in attainment areas circumventing the intent of the ERCs, which are only intended to provide flexibility in nonattainment areas. Also, the EPA states the commission has not demonstrated that this revision would not violate §110(*l*) of the Federal Clean Air Act.

The commission is not changing the rule in response to this comment. Emission reductions in Mexico used under THSC, §382.0172(b) must be applied consistent with federal requirements which restrict the generation and use of emission reduction credits to nonattainment areas. Emission reductions in Mexico are substitutions only, not credits, and are not freely tradable. Should El Paso remain in nonattainment status, emission reductions and the generation of emission reduction credits must meet federal requirements and are subject to EPA approval. If as expected, El Paso is reclassified as an attainment area, the adopted rule change will allow beneficial emission reduction substitutions to continue as a result of reductions achieved in Ciudad Juárez without relating those emission reductions to the attainment status of El Paso. Because each generation and use will be subjected to case-by-case review by both the executive direc-

tor as well as the EPA to ensure a greater health benefit, §110(*l*) of the Clean Air Act will not be violated.

ELPE suggests adding the phrase "except for emissions reductions achieved outside the United States" in several places in §101.302(c) and §101.373(b) to indicate that the requirements of the subsections, which relate to SIP development, do not apply to emission reductions outside the United States.

The commission is not changing the rule in response to this comment. Adding the suggested language would indicate that emission reductions outside the United States are certifiable as credits; they are not. Reductions outside the United States may be substituted for required emission reductions within a specific area, but cannot be banked as a credit for trading that has an indefinite life.

ELPE suggests that §101.305(b) and §101.375(b) be amended to correct an apparent omission and include the phrase "or precursors of criteria pollutants." ELPE and EPA commented that a reference to precursors of criteria pollutants should be included in §101.338(b).

The commission agrees with this comment and is making the necessary change in these two sections as well as §101.338(b).

The EPA comments that the word "if" in §101.305(b)(1) is confusing and suggests substitution of the word "and." The EPA comments that the use of the term "executive director" in §101.305(c)(1) - (3) is confusing because it omits EPA's co-approval authority. The EPA also comments that the word "foreign" or "Mexican" should be added to indicate that reductions must also be surplus to Mexican law.

The commission agrees with these comments and is making the necessary changes. The commission is removing the reference to "international law."

ELPE and EPA comment that §101.338(a) and (b) be modified to include the phrase "to meet the allowance holding requirements of this division" for clarification.

The commission agrees with these comments and has added the references to allowance holding requirements and precursor pollutants.

The EPA recommends that §101.338 be revised to state that international reductions under the section are only used to comply with the Chapter 101, Subchapter H, Division 2, Emission Banking and Trading Allowances, and cannot be used in the East Texas Region because of distance limitations.

The commission is not changing the rule in response to this comment. Distance limitations on the use of §101.338 are included within the section.

The EPA comments that the word "if" in §101.338(b)(1) is confusing and suggests substitution of the word "and." The EPA comments that the word "foreign" or "Mexican" be added in §101.338(c)(1) to indicate that reductions must also be surplus to Mexican law. The EPA also comments that the use of the term "executive director" in subsection (c)(1) - (3) is confusing because it omits EPA's co-approval authority.

The commission agrees with these comments and is making the necessary changes. The commission is removing the reference to "international law."

The EPA comments that §101.339(b) should be revised to include reporting requirements of actual SO_2 allowances used. HSC comments that the commission should verify emission reductions resulting in credits and determine the compliance status of the company using the credit.

The commission agrees with the EPA and is adding SO_2 to the required reporting requirements. The commission also agrees with HSC but no rule change is necessary. These procedures are currently part of the banking program.

ELPE comments that §101.372 be deleted or that §101.372(a) be modified to allow reductions outside the United States to be creditable provided the conditions of §101.375, Emission Reductions Achieved Outside the United States, are met.

The commission is not changing the rule in response to this comment. Adding the suggested language would indicate that emission reductions outside the United States are certifiable as credits; they are not. Reductions outside the United States may be substituted for required emission reductions within a specific area, but cannot be banked as a credit for trading that has an indefinite life.

The EPA comments that language in §101.372(f)(7) pertaining to reduction of VOC and NO_x be moved to §101.375 so there is no confusion whether §101.372 is further modified by §101.375. The EPA also states that the use in Texas of reductions made in Mexico should improve Texas's air quality by complying with §101.375.

The commission is changing the language in §101.372(f)(7) to refer to "emission reductions in other nations" instead of "emission credits." This will make the language consistent with other references to reductions outside the United States.

The EPA expresses concern that the incorporation of SB 784 in §101.375 would allow sources anywhere within 100 kilometers of the Texas - Mexico border to generate and use credits from Mexico. The EPA states that this provision can weaken the credit program and recommends the use of international DERCs in the event El Paso is designated as attainment. The EPA states Texas has not demonstrated that this revision will not violate FCAA, §110(*l*).

Senate Bill 784 allows the use of emission reductions in Mexico as a substitution for required emission reductions in Texas. The Mexican emission reductions are not certifiable as credits and may only be applied for a specific use in an area of Texas affected by the emissions or where a greater health benefit, as determined by the executive director and the EPA, is realized. Because each generation and use will be subjected to case-by-case review by both the executive director as well as the EPA to ensure a greater health benefit, FCAA, §110(*l*) will not be violated.

HSC opposes using creditable reductions outside the United States unless three conditions are met: the authority responsible for the regional air pollution control plan must demonstrate that all reasonably available domestic control measures have been implemented; there are insufficient domestic reductions available; and grandfathered facilities may not participate.

The commission is not changing the rule in response to this comment. The implementation of SB 784 is intended to provide incentives for cooperative efforts to reduce emissions in Mexico where those emissions directly affect Texas. The three conditions listed by HSC would work against those incentives.

HSC opposes substituting reductions in one pollutant for reductions of another, and there is no scientific method to know the relative benefits of this substitution.

The commission is not changing the rule in response to this comment. The substitution of reductions will be based on nonattainment criteria pollutants or on a finding of greater health benefit.

The EPA notes that §101.375(a) uses the phrase "use discrete emission credits for reductions" and §101.375(b) uses the phrase "use reductions." The EPA comments that the language should be made parallel.

The commission agrees with the EPA comment and is changing §101.375(a) and (b) to refer to "emission reductions."

The EPA comments that the word "if" in §101.375(b)(1) is confusing and suggests substitution of the word "and." The EPA comments that the word "foreign" or "Mexican" be added in §101.375(c)(1) to indicate that reductions must also be surplus to Mexican law. The EPA also comments that the use of the term "executive director" in §101.375(c)(1) - (3) is confusing because it omits EPA's co-approval authority.

The commission agrees with these comments and is making the necessary changes. The commission is removing the reference to "international law."

HSC opposes the revisions in §101.378(b) and the allowed use of shutdown credits generated prior to September 30, 2002 until September 30, 2010, and supports a five-year life for these credits.

The commission is not changing the rule in response to this comment. The proposed expiration date is consistent with federal policy.

TIP requests clarification on whether credits that will expire on September 30, 2010, can be used to meet annual emission limits for calendar year 2010.

Allowance account reconciliation must occur by March 31 of the year following the control period. Discrete emission credits will have expired by the reconciliation date. Facilities not subject to a cap and trade program may use credits to meet allowable emission rates until the expiration date of September 30, 2010, but then must reduce emissions to remain in compliance with allowables for the remainder of calendar year 2010.

DIVISION 1. EMISSION CREDIT BANKING AND TRADING

30 TAC §§101.302, 101.305, 101.306

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended and new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended and new sections are also proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended and new sections are also adopted under 42 USC, §7410(a)(2)(A), that requires state implementation plans to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended and new sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.302. General Provisions.

(a) Applicable pollutants. Reductions of criteria pollutants, excluding lead, or precursors of criteria pollutants for which an area is designated nonattainment, may qualify as emission credits. Reductions of one pollutant may not be used to meet the requirements for another pollutant, unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another, subject to executive director and United States Environmental Protection Agency (EPA) approval.

(b) Eligible generator categories. The following categories are eligible to generate emission credits:

(1) facilities, including area sources;

(2) mobile sources; and

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(c) Emission credit requirements.

(1) Emission reduction credits are certified reductions that meet the following requirements:

(A) reductions must be enforceable, permanent, quantifiable, real, and surplus;

(B) the certified reduction must be surplus at the time it is created, as well as when it is used;

(C) in order to become certified, the reduction must have occurred after the most recent year of emissions inventory used in the state implementation plan (SIP); and

(D) the facility's annual emissions prior to the reduction strategy must have been reported or represented in the emissions inventory used in the SIP.

(2) Mobile emission reduction credits are certified reductions that meet the following requirements:

(A) reductions must be enforceable, permanent, quantifiable, real, and surplus;

(B) the certified reduction must be surplus at the time it is created, as well as when it is used;

(C) in order to become certified, the reduction must have occurred after the most recent year of emissions inventory used in the SIP;

(D) the mobile source's annual emissions prior to the emission credit application must have been represented in the emissions inventory used in the SIP; and

(E) the mobile sources must have been included in the attainment demonstration baseline emissions inventory.

(3) Emission reductions from a facility or mobile source that are certified as emission credits under this division cannot be recertified in whole or in part as credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of emission credits shall use a protocol that has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols must be used as follows.

(A) Facilities subject to the emission specifications under §§117.106, 117.206, or 117.475 of this title (relating to Emission Specifications for Attainment Demonstrations; and Emission Specifications) shall quantify reductions in nitrogen oxide emissions using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 of this title (relating to Control Requirements; and Emission Specifications) shall quantify volatile organic compound reductions using the testing and monitoring methodologies identified to show compliance with the emission specifications or requirements.

(C) If the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following requirements apply:

(i) the amount of emission credits from a facility or mobile source, in tons per year, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) facilities with continuous emissions monitoring systems or predictive emissions monitoring systems in place shall use this data in quantifying actual emissions;

(iv) the chosen quantification protocol must be made available for public comment for a period of 30 days and must be viewable on the commission's Web site;

(v) the chosen quantification protocol and any comments received during the public comment period shall be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols shall not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA proposes disapproval of the protocol in the *Federal Register*.

(2) In the event that the monitoring and testing data required under paragraph (1) of this subsection is missing or unavailable, the facility may report actual emissions for that period of time using these listed methods in the following order of preference to determine actual emissions:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) *EPA Compilation of Air Pollution Emission Factors* (AP-42), September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator shall use the most conservative method for replacing the missing data, submit the justification for not using the methods in paragraph (1) of this subsection, and submit the justification for the method used.

(e) Credit certification.

(1) The amount of emission credits in tons per year will be determined and certified, to the nearest tenth of a ton per year.

(2) Applications for certification will be reviewed in order to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the emission credit application. The applicant may submit a revised application in accordance with the requirements of this division.

(4) If a facility's or mobile source's actual emissions exceed its allowable emission limit, reductions of emissions exceeding the limit may not be certified as emission credits.

(5) Applications for certification of emission credit from reductions quantified under subsection (d)(1)(C) of this section may only be approved upon completion of the public comment period.

(f) Geographic scope. Except as provided in §101.305 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in nonattainment areas can be certified. An emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the executive director and the EPA; and

(1) a demonstration has been made and approved by the executive director and the EPA to show that the emission reductions achieved in another county or state provide an improvement to the air quality in the county of use; or

(2) the emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been made and approved by the executive director and the EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the national ambient air quality standard in the nonattainment area of use.

(g) Recordkeeping. The generator shall maintain a copy of all notices and backup information submitted to the registry for a minimum of five years. The user shall maintain a copy of all notices and backup information submitted to the credit registry from the beginning of the use period and for at least five years after. The user shall also make such records available upon request to representatives of the ex-

ecutive director, EPA, and any local enforcement agency. The records must include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for each mobile source using emission credits;

(2) the amount of emission credits being used by each facility or mobile source; and

(3) the specific number, name, or other identification of emission credits used for each facility or mobile source.

(h) Public information. All information submitted with notices, reports, and trades regarding the nature, quantity, and sales price of emissions associated with the use, generation, and transfer of an emission credit is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information, may result in the rejection of the emission credit application. All nonconfidential notices and information regarding the generation, availability, use, and transfer of emission credits shall be immediately made available to the public.

(i) Authorization to emit. An emission credit created under this division is a limited authorization to emit the pollutants identified in subsection (a) of this section, unless otherwise defined, in accordance with the provisions of this section, 42 United States Code, §§7401 *et seq*., and Texas Health and Safety Code, Chapter 382, as well as regulations promulgated thereunder. An emission credit does not constitute a property right. Nothing in this division may be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(j) Program participation. The executive director has the authority to prohibit an organization from participating in emission credit trading either as a generator or user, if the executive director determines that the organization has violated the requirements of the program, or abused the privileges provided by the program.

(k) Compliance burden. Users may not transfer their compliance burden and legal responsibilities to a third-party participant. Third-party participants may only act in an advisory capacity to the user.

(l) Credit ownership. The owner of the initial emission credit certificate shall be the owner or operator of the facility or mobile source creating the emission reduction. The executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the facility or mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the facility or mobile source lacks the potential to generate 1/10 ton of credit.

§101.305. Emission Reductions Achieved Outside the United States.

(a) A facility may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section.

(b) A facility may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

(2) demonstrate that the use of the reduction does not cause localized health impacts, as determined by the executive director and EPA;

(3) submit all supporting information for calculations and modeling, and any additional information requested by the executive director and EPA; and

(4) be located within 100 kilometers of the Texas - Mexico border.

(d) This section does not apply to reductions in emissions of lead.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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DIVISION 2. EMISSIONS BANKING AND TRADING ALLOWANCES

30 TAC §101.338

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The repeal is also adopted

under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The repeal is also adopted under 42 USC, §7410(a)(2)(A), that requires state implementation plans to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The repeal implements THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §101.338, §101.339

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The new sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The new sections are also adopted under 42 USC, §7410(a)(2)(A), that requires state implementation plans to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The new sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.338. Emission Reductions Achieved Outside the United States.

(a) A grandfathered or electing electric generating facility (EGF) may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants to meet the allowance holding requirements of this division if the facility meets the requirements of subsection (c) of this section.

(b) A grandfathered or electing EGF may use reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants or to meet the allowance holding requirements of this division if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

(2) demonstrate that the use of the reduction does not cause localized health impacts, as determined by the executive director and EPA;

(3) submit all supporting information for calculations and modeling, and any additional information requested by the executive director and EPA; and

(4) be located within 100 kilometers of the Texas - Mexico border.

(d) This section does not apply to reductions in emissions of lead.

§101.339. Program Audits and Reports.

(a) No later than three years after the effective date of this division, and every three years thereafter, the executive director will audit this program.

(1) The audit will evaluate the impact of the program on the state's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the executive director may choose to include.

(2) The executive director will recommend measures to remedy any problems identified in the audit. The trading of allowances may be discontinued by the executive director in part or in whole and in any manner, with commission approval, as a remedy for problems identified in the program audit.

(3) The audit data and results will be completed and submitted to the United States Environmental Protection Agency (EPA) and made available for public inspection within six months after the audit begins.

(b) No later than September 30 following the end of each control period, the executive director shall develop and make available to the general public and EPA, a report that includes:

(1) number of allowances allocated to each compliance account;

(2) total number of allowances allocated under this division;

(3) number of actual nitrogen oxides (NO_x) and sulfur dioxide (SO_2) allowances subtracted from each compliance account based on the actual NO_x and SO_2 emissions from the site; and

(4) a summary of all trades completed under this division.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. DISCRETE EMISSION CREDIT BANKING AND TRADING

30 TAC §§101.372, 101.373, 101.375, 101.376, 101.378

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended and new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended and new sections are also adopted under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended and new sections are also adopted under 42 USC, §7410(a)(2)(A), that requires state implementation plans to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended and new sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.372. General Provisions.

(a) Applicable pollutants. Reductions of volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO_2), and particulate matter with an aerodynamic diameter of less than or equal to a nominal ten microns (PM_{10}) may qualify as discrete emission credits as appropriate. Reductions of other criteria pollutants are not creditable. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, unless urban airshed modeling demonstrates that one may be substituted for another subject to approval by the executive director and the United States Environmental Protection Agency (EPA).

(b) Eligible generator categories. Eligible categories include the following:

(1) facilities (including area sources);

(2) mobile sources; or

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under §101.30 of this title (relating to Conformity of General Federal Actions to State Implementation Plans).

(c) Discrete emission credit requirements.

(1) To be creditable as a discrete emission reduction credit (DERC), an emission reduction must meet the following:

(A) the reduction be real, quantifiable, and surplus at the time the discrete emission credit is generated;

(B) the reduction must have occurred after the most recent year of emissions inventory used in the state implementation plan (SIP) for all applicable pollutants; and

(C) the facility's annual emissions prior to the reduction strategy must have been reported or represented in the emissions inventory used for the SIP.

(2) To be creditable as a mobile discrete emission reduction credit (MDERC), an emission reduction must meet the following:

(A) the reduction must be real, quantifiable, and surplus at the time it is created;

(B) the reduction must have occurred after the most recent year of emissions inventory used in the SIP for all applicable pollutants;

(C) the mobile source's emissions must have been represented in the emissions inventory used for the SIP; and

(D) the mobile sources must have been included in the attainment demonstration baseline emissions inventory. If a mobile reduction implemented is not in the baseline for emissions, this reduction does not constitute a discrete emission reduction.

(3) Emission reductions from a facility or mobile source which are certified as discrete emission credits under this division cannot be recertified in whole or in part as emission credits under another division within this subchapter.

(d) Protocol.

(1) All generators or users of discrete emission credits must use a protocol which has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols shall be used as follows.

(A) Facilities subject to the emission specifications under §§117.106, 117.206, or 117.475 of this title (relating to Emission Specifications for Attainment Demonstrations; and Emission Specifications) shall quantify reductions in NO_x using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 (relating to Emission Specifications; and Control Requirements) shall quantify VOC reductions using the testing and monitoring methodologies identified to show compliance with the emission specifications or the requirements.

(C) If the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following applies:

(i) the amount of discrete emission credits from a facility or mobile source, in tons, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator must collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) facilities with continuous emissions monitoring systems or predictive emissions monitoring systems in place shall use this data in quantifying actual emissions;

(iv) the chosen quantification protocol shall be made available for public comment for a period of 30 days and shall be viewable on the commission's Web site;

(v) the chosen quantification protocol and any comments received during the public comment period shall, upon approval by the executive director, be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols shall not be accepted for use with this division (relating to Discrete Emission Credit Banking and Trading) if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA proposes disapproval of the protocol in the *Federal Register*.

(2) In the event that the monitoring and testing data required under paragraph (1) of this subsection is missing or unavailable, the facility may report actual emissions for that period of time using these listed methods in the following order of preference to determine actual emissions:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) *EPA Compilation of Air Pollution Emission Factors* (AP-42), September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator shall use the most conservative method for replacing the missing data, submit the justification for not using the methods in paragraph (1) of this subsection, and submit the justification for the method used.

(e) Credit certification.

(1) The amount of discrete emission credits shall be rounded down to the nearest tenth of a ton when generated and shall be rounded up to the nearest tenth of a ton when used.

(2) Applications for certification will be reviewed in order to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the discrete emission credit notification. The applicant may submit a revised discrete emission credit notification in accordance with the requirements of this division.

(4) If a facility's or mobile source's emissions exceed its allowable emission limit, the amount of emissions exceeding the limit may not be certified as discrete emission credits.

(f) Geographic scope. Except as provided in paragraph (7) of this subsection and §101.375 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in the State of Texas may be creditable and used in the state with the following limitations.

(1) VOC and NO_x discrete emission credits generated in an ozone attainment area may be used in any county or portion of a county designated as attainment or unclassified, except as specified in paragraphs (4) and (5) of this subsection and may not be used in an ozone nonattainment area.

(2) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may be used either in the same ozone nonattainment area in which they were generated, or in any county or portion of a county designated as attainment or unclassified.

(3) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may not be used in any other ozone nonattainment area, except as provided in this subsection.

(4) VOC discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), if generated outside of the covered attainment counties. VOC discrete emission credits generated in a nonattainment area may be used in the covered attainment counties, except those generated in El Paso.

(5) NO_x discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title, if generated outside of the covered attainment counties. NO_x discrete emission credits generated in a nonattainment area, except those generated in El Paso, may be used in the covered attainment counties.

(6) CO, SO_2, and PM_{10} discrete emission credits must be used in the same metropolitan statistical area (as defined in Office of Management and Budget Bulletin Number 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993) in which the reduction was generated.

(7) VOC and NO_x discrete emission credits generated in other counties, states, or emission reductions in other nations may be

used in any attainment or nonattainment county provided a demonstration has been made and approved by the executive director and the EPA, to show that the emission reductions achieved in the other county, state, or nation improve the air quality in the county where the credit is being used.

(g) Ozone season. In areas having an ozone season of less than 12 months (as defined in 40 Code of Federal Regulations Part 58, Appendix D) VOC and NO_x discrete emission credits generated outside the ozone season may not be used during the ozone season.

(h) Recordkeeping. The generator must maintain a copy of all notices and backup information submitted to the registry for a minimum of five years, following the completion of the generation period. The user must maintain a copy of all notices and backup information submitted to the registry for a minimum of five years, following the completion of the use period. Other relevant reference material or raw data must also be maintained on-site by the participating facilities or mobile sources. The user must also maintain a copy of the generator's notice and backup information for a minimum of five years after the use is completed. The records shall include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for mobile sources using discrete emission credits;

(2) the amount of discrete emission credits being used by each facility or mobile source; and

(3) the specific number, name, or other identification of discrete emission credits used for each facility or mobile source.

(i) Public information. All information submitted with notices, reports, and trades regarding the nature, quantity of emissions, and sales price associated with the use or generation of discrete emission credits is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information may result in the rejection of the discrete emission reduction application. All nonconfidential notices and information regarding the generation, use, and availability of discrete emission credits may be obtained from the registry.

(j) Authorization to emit. A discrete emission credit created under this division is a limited authorization to emit the specified pollutants in accordance with the provisions of this section, the Federal Clean Air Act, and the Texas Clean Air Act, as well as regulations promulgated thereunder. A discrete emission credit does not constitute a property right. Nothing in this division should be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(k) Program participation. The executive director has the authority to prohibit a company from participating in discrete emission credit trading either as a generator or user, if the executive director determines that the company has violated the requirements of the program or abused the privileges provided by the program.

(l) Compliance burden and enforcement.

(1) The user is responsible for assuring that a sufficient quantity of discrete emission credits are acquired to cover the applicable facility or mobile source's emissions for the entire use period.

(2) The user is in violation of this section if the user does not possess enough discrete emission credits to cover the compliance need for the use period. If the user possesses an insufficient quantity of discrete emission credits to cover its compliance need, the user will be out of compliance for the entire use period. Each day the user is out of compliance may be considered a violation.

(3) Users may not transfer their compliance burden and legal responsibilities to a third-party participant. Third-party participants may only act in an advisory capacity to the user.

(m) Credit ownership. The owner of the initial discrete emission credit certificate shall be the owner or operator of the facility or mobile source creating the emission reduction. The executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the facility or mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the facility or mobile source lacks the potential to generate one tenth of a ton of credit.

§101.375. Emission Reductions Achieved Outside the United States.

(a) A facility may use emission reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section.

(b) A facility may use emission reductions achieved outside the United States of criteria pollutants or precursors of criteria pollutants and substitute these reductions for reductions in other criteria pollutants or precursors of criteria pollutants if the facility meets the requirements of subsection (c) of this section; and

(1) the reduction is substituted for the reduction of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or

(2) a reduction of an air contaminant for which the area in which the facility is located has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment is substituted for any air contaminant for which the area has been designated as nonattainment or leads to the formation of any criteria pollutant for which the area has been designated as nonattainment.

(c) The use of reductions outside the United States must be approved by the executive director and the United States Environmental Protection Agency (EPA), and the user of the emission reduction must:

(1) demonstrate to the executive director and EPA that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, federal, state, or local law;

(2) demonstrate that the use of the reduction does not cause localized health impacts, as determined by the executive director and EPA;

(3) submit all supporting information for calculations and modeling, and any additional information requested by the executive director and EPA; and

(4) be located within 100 kilometers of the Texas - Mexico border.

(d) This section does not apply to reductions in emissions of lead.

§101.376. Discrete Emission Credit Use.

(a) Requirements to use discrete emission credits. Discrete emission credits may be used if the following requirements are met.

(1) The user shall have ownership of a sufficient amount of discrete emission credits before the use period for which the specific discrete emission credits are to be used.

(2) The user shall hold sufficient discrete emission credits to cover the user's compliance obligation at all times.

(3) The user shall acquire additional discrete emission credits during the use period if it is determined the user does not possess enough discrete emission credits to cover the entire use period. The user shall acquire additional credits as allowed under this section prior to the shortfall, or be in violation of this section.

(4) Facility or mobile source operators may acquire and use only discrete emission credits listed on the registry.

(b) Use of discrete emission credits. With the exception of uses prohibited in subsection (c) of this section or precluded by commission order or condition within an authorization under the same commission account number, discrete emission credits may be used to meet or demonstrate compliance with any facility or mobile regulatory requirement including the following:

(1) to exceed any allowable emission level, if the following conditions are met:

(A) in ozone nonattainment areas, permitted facilities may use discrete emission credits to exceed permit allowables by no more than ten tons for nitrogen oxides or five tons for volatile organic compounds in a 12-month period as approved by the executive director. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested; or

(B) at permitted facilities in counties or portions of counties designated as attainment or unclassified, discrete emission credits may be used to exceed permit allowables by values not to exceed the prevention of significant deterioration significance levels as provided in 40 Code of Federal Regulations (CFR) §52.21(b)(23), as approved by the executive director prior to use. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested;

(2) as new source review (NSR) permit offsets, if the following requirements are met:

(A) the user shall obtain the executive director's approval prior to the use of specific discrete emission credits to cover, at a minimum, one year of operation of the new or modified facility in the NSR permit;

(B) the amount of discrete emission credits needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user shall also purchase and retire enough discrete emission credits to meet the offset ratio requirement in the user's ozone nonattainment area. The user shall purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher; and

(C) the NSR permit must meet the following requirements:

(i) the permit must contain an enforceable requirement that the facility obtain at least one additional year of offsets before continuing operation in each subsequent year;

(ii) prior to issuance of the permit the user shall identify the discrete emission credits; and

(iii) prior to start of operation the user shall submit a completed DEC-2 Form, Notice of Intent to Use Discrete Emission Credits, along with the original certificate;

(3) to comply with the Mass Emissions Cap and Trade Program requirements as provided in §101.356(g) of this title (relating to Allowance Banking and Trading); or

(4) to comply with Chapters 114, 115, and 117 of this title (relating to Control of Air Pollution from Motor Vehicles; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as allowed.

(c) Discrete emission credit use prohibitions. A discrete emission credit may not be used under this division:

(1) before it has been acquired by the user;

(2) for netting to avoid the applicability of federal and state NSR requirements;

(3) to meet (as codified in 42 United States Code (USC), Federal Clean Air Act (FCAA)) requirements for:

(A) new source performance standards under FCAA, §111 (42 USC, §7411);

(B) lowest achievable emission rate standards under FCAA, §173(a)(2) (42 USC, §7503(a)(2));

(C) best available control technology standards under FCAA, §165(a)(4) (42 USC, §7475(a)(4)) or Texas Health and Safety Code, §382.0518(b)(1);

(D) hazardous air pollutants standards under FCAA, §112 (42 USC, §7412), including the requirements for maximum achievable control technology;

(E) standards for solid waste combustion under FCAA, §129 (42 USC, §7429);

(F) requirements for a vehicle inspection and maintenance program under FCAA, §182(b)(4) or (c)(3) (42 USC, §7511a(b)(4) or (c)(3));

(G) ozone control standards set under FCAA, §183(e) and (f) (42 USC, §7511b(e) and (f));

(H) clean-fueled vehicle requirements under FCAA, §246 (42 USC, §7586);

(I) motor vehicle emissions standards under FCAA, §202 (42 USC, §7521);

(J) standards for non-road vehicles under FCAA, §213 (42 USC, §7547);

(K) requirements for reformulated gasoline under FCAA, §211(k) (42 USC, §7545); or

(L) requirements for Reid vapor pressure standards under FCAA, §211(h) and (i) (42 USC, §7545(h) and (i));

(4) to allow an emissions increase of an air contaminant above a level authorized in a permit or other authorization that exceeds the limitations of §106.261 or §106.262 of this title (relating to Facilities (Emission Limitations); and Facilities (Emission and Distance Limitations)) except as approved by the executive director and the United States Environmental Protection Agency. This paragraph does not apply to limit the use of discrete emission reduction credits (DERC) or mobile discrete emission reduction credits in lieu of allowances under §101.356(h) of this title;

(5) to authorize a facility whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable re-

quirements that would otherwise be triggered by such major source status; or

(6) to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director.

(d) Notice of intent to use.

(1) A completed DEC-2 Form, signed by an authorized representative of the applicant shall be submitted to the executive director in accordance with the following requirements.

(A) Discrete emission credits may be used only after the applicant has submitted the notice and received executive director approval.

(B) The application must be submitted at least 45 days prior to the first day of the use period if the discrete emission credits were generated from a facility, 90 days if the discrete emission credits were generated from a mobile source, and every 12 months thereafter for each subsequent year if the use period exceeds 12 months.

(C) A copy of the application shall also be sent to the federal land manager 30 days prior to use if the user is located within 100 kilometers of a Class I area, as listed in 40 CFR Part 81 (2001).

(D) The application must include, but is not limited to, the following information for each use:

(i) the applicable state and federal requirements that the discrete emission credits will be used to comply with and the intended use period;

(ii) the amount of discrete emission credits needed;

(iii) the baseline emission rate, activity level, and total emissions for the applicable facility or mobile source;

(iv) the actual emission rate, activity level, and total emissions for the applicable facility or mobile source;

(v) the most stringent emission rate and the most stringent emission level for the applicable facility or mobile source, considering all applicable regulatory requirements;

(vi) a complete description of the protocol, as submitted by the executive director to the United States Environmental Protection Agency for approval, used to calculate the amount of discrete emission credits needed;

(vii) the actual calculations performed by the user to determine the amount of discrete emission credits needed;

(viii) the date that the discrete emission credits were acquired or will be acquired;

(ix) the discrete emission credit generator and the original certificate of the discrete emission credits acquired or to be acquired;

(x) the price of the discrete emission credits acquired or the expected price of the discrete emission credits to be acquired, except for transfers between sites under common ownership or control;

(xi) a statement that due diligence was taken to verify that the discrete emission credits were not previously used, the discrete emission credits were not generated as a result of actions prohibited under this regulation, and the discrete emission credits will not be used in a manner prohibited under this regulation; and

(xii) a certification of use, that must contain certification under penalty of law by a responsible official of the user of truth, accuracy, and completeness. This certification must state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) DERC use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.108, 117.138, 117.210, or 117.223 of this title (relating to System Cap; and Source Cap), a user may use the equations listed in those sections, or the following equations.

(i) For the rolling average cap:
Figure: 30 TAC §101.376(d)(2)(A)(i) (No change.)

(ii) For maximum daily cap:
Figure: 30 TAC §101.376(d)(2)(A)(ii) (No change.)

(B) The amount of discrete emission credits needed to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(d)(2)(B) (No change.)

(C) The amount of discrete emission credits needed to exceed an allowable emissions level is calculated as follows.
Figure: 30 TAC §101.376(d)(2)(C) (No change.)

(D) The user shall retire 10% more discrete emission credits than are needed, as calculated in this paragraph, to ensure that the facility or mobile source environmental contribution retirement obligation will be met.

(E) If the amount of discrete emission credits needed to meet a regulatory requirement or to demonstrate compliance is greater than ten tons, an additional 5.0% of the discrete emission credits needed, as calculated in this paragraph, must be acquired to ensure that sufficient discrete emission credits are available to the user with an adequate compliance margin.

(3) A user may submit a notice late in the case of an emergency, but the notice must be submitted before the discrete emission credits can be used. The user shall include a complete description of the emergency situation in the notice of intent to use. All other notices submitted less than 45 days prior to use, or 90 days prior to use for a mobile source, will be considered late and in violation.

(4) The user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating facility or mobile source in the notice of intent to use. If the generator's credits are rejected or the notice of generation is incomplete, the use of discrete emission credits by the user may be delayed by the executive director. The user cannot use any discrete emission credits that have not been certified by the executive director. The executive director may reject the use of discrete emission credits by a facility or mobile source if the credit and use cannot be demonstrated to meet the requirements of this section.

(5) If the facility is in an area with an ozone season less than 12 months, the user shall calculate the amount of discrete emission credits needed for the ozone season separately from the non-ozone season.

(e) Notice of use.

(1) The user shall calculate:

(A) the amount of discrete emission credits used, including the amount of discrete emission credits retired to cover the environmental contribution, as described in subsection (d)(2)(C) of this section, associated with actual use; and

(B) the amount of discrete emission credits not used, including the amount of excess discrete emission credits that were purchased to cover the environmental contribution, as described in sub-

section (d)(2)(C) of this section, but not associated with the actual use, and available for future use.

(2) DERC use is calculated by the following equations.

(A) The amount of discrete emission credits used to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(A) (No change.)

(B) The amount of discrete emission credits used to comply with permit allowables is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(B) (No change.)

(3) A DEC-3 Form, Notice of Use of Discrete Emission Credits, shall be submitted to the commission in accordance with the following requirements.

(A) The notice must be submitted within 90 days after the end of the use period.

(B) The notice must be submitted within 90 days of the conclusion of each 12-month use period, if applicable.

(C) The notice is to be used as the mechanism to update or amend the notice of intent to use and must include any information different from that reported in the notice of intent to use, including, but not limited to, the following items:

(i) purchase price of the discrete emission credits obtained prior to the current use period, except for transfers between sites under common ownership or control;

(ii) the actual amount of discrete emission credits possessed during the use period;

(iii) the actual emissions during the use period for volatile organic compounds and nitrogen oxides;

(iv) the actual amount of discrete emission credits used;

(v) the actual environmental contribution; and

(vi) the amount of discrete emission credits available for future use.

(4) Discrete emission credits that are not used during the use period are surplus and remain available for transfer or use by the holder. In addition, any portion of the calculated environmental contribution not attributed to actual use is also available.

(5) The user is in violation of this section if the user submits the report of use later than the allowed 90 days following the conclusion of the use period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§293.1, 293.11, 293.12, 293.20, 293.22, 293.23, 293.32, 293.41, 293.44, 293.51, 293.69, and 293.111 - 293.113.

Sections 293.12, 293.23, 293.32, and 293.44 are adopted *with changes* to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3199). Sections 293.1, 293.11, 293.20, 293.22, 293.41, 293.51, 293.69, and 293.111 - 293.113 are adopted *without changes* to the proposed text and will not be republished.

The commission also withdraws the proposal of §§293.54, 293.201, and 293.202 as published in the April 14, 2006, issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission has the statutory responsibility and authority to create, supervise, and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12, 36, and 49 - 67. The commission oversees approximately 1,100 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of all general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to engineering standards and economic feasibility of district construction project design and completion.

This rulemaking establishes new and revises existing requirements relating to the administration of water districts and the commission's supervision over districts' actions under TWC, Chapters 36, 49, 51, 54, and 65. House Bill (HB) 828, 79th Legislature, 2005, amends TWC, §49.181 to exempt certain refunding bonds from having to obtain commission approval. HB 1208, 79th Legislature, 2005, amends provisions in TWC, Chapter 54 concerning a municipal utility district's (MUDs) eminent domain authority outside its boundaries. HB 1644, 79th Legislature, 2005, amends provisions in TWC, Chapter 51 (Water Control and Improvement Districts - WCIDs) and Chapter 54 (MUDs) to allow more flexibility in contracting and funding, and to place limitations on a municipality annexing such districts. HB 1673, 79th Legislature, 2005, amends provisions in TWC, Chapter 65, to allow specific purposes to be requested upon conversion to a special utility district (SUD). HB 1763, 79th Legislature, 2005, amends provisions in TWC, Chapter 36, concerning notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts (GCD), and to management planning and joint management planning requirements for GCDs. Senate Bill (SB) 693, 79th Legislature, 2005, amends provisions in TWC, Chapter 54, to place limitations on the filling of a vacancy on a district board. The revisions amend and clarify commission rule language to conform with the statutory changes made to TWC, Chapters 36, 49, 51, 54, and 65.

Specifically, the rulemaking modifies requirements on when a district must obtain commission approval of refunding bonds; clarifies allowable land costs to reflect limitations on a MUD's eminent domain authority outside its boundaries; adds provisions allowing MUDs and WCIDs to contract with third parties for ownership and operation of facilities; adds provisions allowing districts to fund certain certificate of convenience and necessity (CCN) costs; allows a water supply corporation to request only certain powers upon conversion to a SUD and requires the

commission to only grant the powers requested; clarifies GCD management plan adoption, submittal, and implementation requirements; modifies joint GCD management planning requirements in groundwater management areas (GMAs) and compliance with joint planning provisions; clarifies review panel recommendations and commission actions regarding GCDs; and clarifies qualifications for directors of a MUD.

SECTION BY SECTION DISCUSSION

§293.1, Objective and Scope of Rules; Meaning of Certain Words

The adopted amendment to §293.1(a) corrects an outdated rule reference to the TWC.

§293.11, Information Required to Accompany Applications for Creation of Districts

The adopted amendment to §293.11(h) provides that a water supply corporation's (WSCs) resolution requesting conversion to a SUD can specify each purpose that a WSC wants the commission to grant upon conversion to a SUD. This adopted rule change is consistent with TWC, §65.021, as amended by HB 1673.

§293.12, Creation Notice Actions and Requirements

The adopted amendment to §293.12 states that if the commission determines that a hearing is necessary, it may only consider the purposes a WSC requests in its resolution requesting conversion to a SUD. This adopted rule change is consistent with TWC, §65.020 and §65.021, as amended by HB 1673.

§293.20, Records and Reporting

The adopted amendment to §293.20(c) provides the conforming three-year time frame for new GCDs to adopt and submit a management plan for consideration and approval by the executive administrator of the Texas Water Development Board (TWDB), and for GCDs to readopt and resubmit their readopted management plans to the executive administrator of the TWDB at least once every five years thereafter. The commission adopts changes that remove language referring to a "certified" management plan and replace it with "approved" management plan to conform with the new statutory language. There are no changes for subsections (a), (b), (d), or (e). This adopted rule change is consistent with TWC, §§36.1071 - 36.1073, and 36.302, as amended by HB 1763.

§293.22, Noncompliance Review and Commission Action

The adopted amendment to §293.22 makes conforming clarifications for instances when commission noncompliance review and action is required related to GCD management planning and joint GCD management planning in a GMA. In subsection (a), the adopted changes set out that the section is applicable if a GCD fails to: 1) submit a groundwater management plan to the executive administrator of the TWDB within three years of the date the GCD was created or the date the GCD was confirmed by election if an election was required; 2) achieve approval of a groundwater management plan, an amended plan, or a readopted plan from the executive administrator or the TWDB; 3) readopt and resubmit the management plan to the executive administrator of the TWDB at least once every five years after the date of management plan approval; 4) forward a copy of its approved groundwater management plan to the other GCDs included in a common GMA; 5) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the GCD's performance under its plan; or 6) adopt, implement, or enforce rules to protect groundwater as evidenced in a report prepared by peer review panel. There are no changes for subsections (b) - (e). In subsection (f), language is removed to conform with a statutory change clarifying GCD dissolution by the commission. There are no changes for subsections (g) - (i). This adopted rule change is consistent with TWC, §36.108 and §36.3011, as amended by HB 1763.

§293.23, Petition Requesting Inquiry in Groundwater Management Area

The adopted amendment to §293.23 renames the section "Petition Requesting Inquiry in Groundwater Management Area" and makes conforming changes in subsection (a) to ensure consistency with the statutory change that authorizes both a person with a legally defined interest in the groundwater within the GMA, and a GCD to petition the commission for an inquiry related to joint groundwater management planning. In subsection (b), the adopted changes clarify that a person with a legally defined interest in the groundwater within the GMA or a GCD may file a petition to request a commission inquiry; that after the desired future conditions for the GMA have been adopted, a petitioner may request a commission inquiry if the petitioner believes the GMA process has not established the future desired conditions for the aquifers in the GMA; documentation needed to support the petition; and responsibility to provide a copy of the petition to all of the GCDs in the GMA. Additional changes in subsection (b) provide any GCD that is the subject matter of the petition an opportunity to respond to the claims. In subsection (c), the adopted changes require the commission to also review any timely filed responses and add the word "groundwater" to references to the term "management area." No changes are adopted for subsection (d). One citation in subsection (e) has been updated to conform with the changes in subsection (b). This adopted rule change is consistent with TWC, §36.3011 and §36.304, as amended by HB 1763.

§293.32, Qualifications of Directors

The adopted amendment to §293.32(a) provides additional qualifications to be a director of a MUD. This adopted rule change is consistent with TWC, §54.103, as added by SB 693.

§293.41, Approval of Projects and Issuance of Bonds

The adopted amendment to §293.41(a) states that refunding bonds issued to refund bonds originally approved by certain federal or state agencies no longer require commission approval. This adopted rule change is consistent with TWC, §49.181, as amended by HB 828.

§293.44, Special Considerations

The adopted amendment to §293.44(b) reflects that a district may contract with a third party for operation and maintenance of district facilities, and obtain capacity or acquire facilities from another entity, and that a district may issue bonds or other obligations to fund CCN costs. This adopted rule change is consistent with TWC, §§49.218(a), 51.150, 51.402, 54.2351, 54.501, and 49.181, as amended by HB 1644.

§293.51, Land and Easement Acquisition

The adopted amendment to §293.51(e) provides limitations on a MUD's use of eminent domain powers outside of its boundaries. This adopted rule change is consistent with TWC, §54.209, as amended by HB 1208.

§293.69, Purchase of Facilities

The adopted amendment to §293.69 reflects that a pre-purchase inspection is required even if facilities are conveyed to a third party, and that a pre-purchase inspection may not be required if a district's facilities are conveyed to a municipality and the municipality assumes all costs of operation and maintenance. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.111, Water and Wastewater Service Lines and Connections

The adopted amendment to §293.111 adds subsection (b) to clarify that §293.111 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.112, Water, Wastewater and Drainage Facilities

The adopted amendment to §293.112 adds subsection (b) to clarify that §293.112 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

§293.113, District and Water Supply Corporations' Authority Over Wastewater Facilities

The adopted amendment to §293.113 adds subsection (c) to clarify that §293.113 is applicable whether a district intends on operating facilities itself or intends on conveying facilities to a third party. This adopted rule change is consistent with TWC, §51.150 and §54.2351, as amended by HB 1644, and TWC, §5.103.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed these amendments to Chapter 293 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of §2001.0225. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (see Texas Government Code, §2001.0225(g)(3)). Here, the amendments do not meet those qualifications where the primary purposes of this rulemaking initiative are to clarify commission rule language in §§293.1 *et seq*. to conform with the statutory changes made to TWC, Chapter 5; and to create and amend other rules in Chapter 293 to remain consistent with the statutory changes set forth in HBs 828, 1208, 1644, 1673, and 1763 and SB 693 of the 79th Legislature, 2005. As to these six enacted bills, this rulemaking initiative modifies rules within Chapter 293 to accomplish the following: 1) exempt districts from obtaining commission approval to issue refunding bonds to refund bonds issued to and approved by the Farmer's Home Administration, the United States Department of Agriculture, the North American Development Bank, or the TWDB; 2) prohibit a MUD other than one created by Chapter 1029, Acts of the 76th Legislature, 1999, from exercising eminent domain authority outside its boundary if the land is to be used for: a) a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant; b) a site for a park, swimming pool, or other recreational facility except a trail; c) a site for a trail on real property designated as a homestead as defined by §41.002; or d) an exclusive easement through a county regional park; 3) provide more flexibility to a WCID and MUD regarding contracting and funding, and placing limitations on a municipality that may annex these types of districts; 4) requires applicants who seek to convert into a SUD to include a resolution specifying the purposes for the proposed conversion, if only specific purposes are desired, and then limiting the scope of the commission's review, including any hearings, of that application to those purposes contained in the resolution; 5) outlines the procedures for how a GCD or a person with a legally defined interest in groundwater in a GMA petitions the commission to inquire whether a GCD's management plan establishes reasonable future desired conditions for the aquifers in the GMA; and 6) places limitations on when a resigned board member can fill a vacancy on that same district board. While the commission has general jurisdiction over districts and authority to develop rules impacting districts, these changes to the operating processes of districts are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking project does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007. The purposes of this adopted district rulemaking action are to keep the commission's rules consistent with the changes in TWC, Chapters 12, 36, and 49 - 67 made by the legislature in HBs 828, 1208, 1644, 1673, and 1763, and SB 693, 79th Legislature, 2005; and amend a district rule to reflect a statutory change in TWC, Chapter 5. The adopted rules would substantially advance these stated purposes because these changes impact a district's ability to issue refunding bonds, exercise its eminent domain powers, operate with a properly appointed board of directors, convert into a SUD, and enter into a contract for the sale and purchase of capacity in or facilities for water, sewer, drainage, or other services for a municipality, district, other political subdivision, or other utility provider. These adopted rules also substantially advance the creation of a procedure for a GCD to adopt management plans and a review process for the commission thereto.

Promulgation and enforcement of these adopted rules regarding the operations of districts would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Updating commission rules to remain consistent with statutory changes to TWC, Chapter 5, does not involve private real property rights. The statutory changes set forth in HBs 828, 1208, 1644, 1673, and 1763 and SB 693, 79th Legislature, 2005, also do not impact private real property rights. Specifically, private real property rights do not pertain to a district's ability to issue refunding bonds, appoint individuals to the board of directors, convert into a SUD, enter into a contract of sale with a municipality, district, other political subdivision, or other utility provider, or adopt groundwater management plans. In addition, while the issue of eminent domain may pertain to private real property rights, the rule changes implementing HB 1208 do not impact these

property rights where the rules reduce the circumstances when a district can exercise this power. Thus, these adopted rules do not impose a burden on private real property, but instead benefit society by improving the process for districts to operate and for the commission to supervise, which should ultimately improve the quality of service that is provided to their customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Coastal Management Program, and, therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

PUBLIC COMMENT

A public hearing was held in Austin on May 11, 2006. Only one oral comment was received from the Texas Rural Water Association (TRWA), which expressed support for the rulemaking including specifically the changes regarding conversion of a WSC to a SUD. During the comment period (April 14, 2006 to May 15, 2006) four written comments were received. Written comments were received from Edwards Aquifer Authority (EAA) and TWDB requesting changes to the GCD portion of the rules (§§293.20, 293.22, and 293.23). Written comments were received from Utility District Advisory Corporation (UDAC) and Law Offices of Clay E. Crawford, P.C. (CEC) requesting changes or stating that no changes were necessary regarding non-GCD sections.

The commenters suggested modification to the proposed rules as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

General

TRWA expressed support for the rulemaking, including specifically the changes regarding conversion of a WSC to a SUD.

The commission acknowledges the commenter's support of the rule.

Fiscal Note

CEC commented that the assertion in the fiscal note about no significant fiscal implications are anticipated is incorrect. CEC commented that affected districts issuing road bonds would incur the commission's 0.25% bond proceeds fee, an application fee, engineering fees associated with preparing a bond application, and other additional consultant fees. CEC also commented that the assertion of two road bond applications per year is incorrect since for 2006 CEC has represented two districts issuing bonds for roads with an additional five anticipated.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

§293.20, Records and Reporting

The TWDB commented that §293.20(c) does not require a GCD to send a copy of its approved groundwater management plan to regional water planning groups as designated by TWDB in 31 TAC §356.4.

The amendment to §293.20(c) is limited to modifying the management plan terminology from "certified" to "approved," so that the commission's rules are consistent with HB 1763's changes to the TWC. Additionally, §293.20(c), as currently enacted, tracks the statutory language of TWC, Chapter 36, where §36.1071 requires GCDs to forward copies of their management plans, or amendments thereto, to regional water planning groups and TWC, §36.108(b), sets forth that all GCDs in a GMA must forward their management plans to the other GCDs in that area. TWDB rules govern procedures for submitting, reviewing, and approving management plans. Thus, the rule is consistent with the commission's responsibilities as set forth in TWC, Chapter 36, and no change has been made in response to this comment.

§293.22, Noncompliance Review and Commission Action

The TWDB suggested that commission action under proposed §293.22(a)(5) would be unlikely as a result of a GCD's failure to be actively engaged and operational in achieving the objectives of its groundwater management plan. The TWDB suggested that it was unlikely that any GCD will be found to be non-operational, and commented that the State Auditor's Office is no longer required to audit GCDs.

The commission disagrees with this comment and made no change in response to the comment. TWC, §36.302 provides that a GCD is subject to review by the State Auditor's Office under the direction of the legislative audit committee pursuant to Texas Government Code, Chapter 321, and that the State Auditor's Office is authorized to determine if a GCD is not operational.

§293.23, Groundwater Conservation District Petition Requesting Inquiry in Groundwater Management Area

The TWDB commented that some GMAs are expected to establish desired future conditions before the September 1, 2010, deadline, and as proposed, §239.23 would prevent GCDs or interested persons from filing a petition requesting an inquiry in the GMA prior to that time.

The commission agrees with this comment and has changed the section to more closely conform to the statutory language. The start of the last sentence in §293.23(b) now reads "After the desired future conditions for the GMA have been adopted, . . ." instead of "After September 1, 2010, ..."

EAA commented that §293.23 should consistently refer to "a person with a legally defined interest in the groundwater within the groundwater management area" instead of "an interested person."

The commission agrees with this comment and has made the suggested change in each instance in §293.23 where the term "an interested person" was used. TWC, §36.108(f), describes potential petitioners as "district or person with a legally defined interest in the groundwater within the management area," and the commission agrees that the rule should use terminology that is consistent with the TWC.

The EAA suggested §293.23 be revised to include a definition for "a person with a legally defined interest in the groundwater within the groundwater management area," which would limit the enti-

ties that would have standing to file a petition. EAA suggested the requested definition should focus on whether the person's interest could be directly and substantially affected by the issues raised in the petition, and provided suggested language for a definition.

The commission disagrees with this comment. In the petition process contemplated by TWC, Chapter 36, the commission will determine on a case-by-case basis if a non-GCD petitioner is "a person with a legally defined interest in the groundwater within the groundwater management area." While the phrase "person with a legally defined interest in groundwater" is used in TWC, §36.1072 and §36.108, it is undefined in that chapter. Thus, providing a definition for this phrase in the commission's rules could create a subset of potential petitioners that excludes some entities which the legislature had intended to include. Further, no proof of legislative intent was provided in the comment. Thus, no change was made to the rule in response to this comment.

The EAA suggested that language should be inserted in §293.23 to clarify that GCDs have the opportunity to respond to and defend themselves against a petition requesting an inquiry. EAA suggested that this opportunity should be given before the commission considers and acts on the petition. The EAA provided suggested language.

The commission agrees with this comment and has revised §293.23(b)(4) and (5) and (c) to read as follows: *(4) The petitioner shall provide a copy of the filed petition to all groundwater conservation districts within the groundwater management area within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD with the petitioner's GMA.*

(5) Any GCD that is within the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in the GMA. The chief clerk shall accept a response that is filed after the deadline, but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

The first sentence of §293.23(c) is changed as follows: The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed.

The EAA commented that the commission and any review panel should "tread lightly" anytime a petition requesting inquiry is granted, especially when providing recommendations to locally determined policy issues related to adequate planning or adequate protection of groundwater in the GMA. The EAA provided draft language for §293.23 to limit commission and review panel decisions and recommendations.

The commission acknowledges this comment but made no changes to the rule in response to the comment. The commission believes the constraints and requirements placed on a petition requesting an inquiry outlined in §293.23, as amended here, sufficiently implement the TWC and the assigned commission and review panel responsibilities.

§293.32, Qualifications of Directors

CEC commented that §293.32(a)(6) was confusingly worded and did not track the language in TWC, §54.103.

The commission concurs that the rule should be made clearer. Accordingly, the rule has been revised to more closely track the language in TWC, §54.103.

§293.41, Approval of Projects and Issuance of Bonds

UDAC suggested creating a new subsection (o) in §293.59, to reflect that once a district with road powers issues bonds for road projects then the district would need to meet certain feasibility requirements for any subsequent bond issue, whether it included funding for roads or utilities. The comment also provided certain situations where the requirement would not apply.

The criteria for the commission's review of bonds for roads was proposed in §293.202; however, the commission has withdrawn the proposed changes to §293.202 to further consider the issue. Therefore, the commission made no change in response to this comment.

§293.44, Special Considerations

UDAC suggested language to specify that cost-sharing provisions under §293.44(a)(2) and (8) should not apply to a district funding road facilities. UDAC considered that cost sharing should be left only to what a cost-sharing agreement specifies.

The criteria for the commission's review of bonds for roads was proposed in §293.202; however, the commission has withdrawn the proposed changes to §293.202 to further consider the issue. Therefore, the commission made no change in response to this comment.

CEC commented that new §293.44(b)(7) should apply to all districts operating under TWC, Chapter 49, not just to districts operating under TWC, Chapters 51 or 54. Also, CEC commented that TWC, §49.218(a) does not limit the purchase of capacity or capacity rights to only CCN areas. CEC suggested rule language to implement these suggestions.

Section 293.44(b)(7) as published in the rule proposal was not consistent with provisions in TWC, §49.218(a). Accordingly, the rule has been modified to delete a reference to Chapter 51 and 54 districts and instead will apply to all districts operating under TWC, Chapter 49. Additionally, the rule has been modified to allow the purchase of capacity or capacity rights whether within a CCN or not. The revised §293.44(b)(7) accurately reflects provisions in TWC, §49.218(a).

§293.54, Bond Anticipation Notes (BAN)

CEC commented that changes to §293.54 would essentially subject a BAN to the same requirements as a bond application, contrary to specific authorization in the TWC. CEC further stated that TWC, §49.154, only requires that a district have a bond application on file before issuance of a BAN.

The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.

CEC commented that the existing rule contains numerous safeguards, and, therefore, the proposed rule changes are unnecessary and should not be adopted.

The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that generally a BAN should not

be issued until a bond application is declared administratively complete.

The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that instead of certificates by the district's engineer attesting to the completion and availability of certain items required under §293.59(k)(6) of the economic feasibility rules, the district's engineer, attorney, and financial advisor or tax assessor/collector attest to certain criteria prior to the issuance of BAN.

The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that the 25% build-out requirement of §293.59(k)(7) should be met at the time BAN are issued, in lieu of meeting the requirement at a future date within anticipated application time frames.

The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.

UDAC submitted rule language completely rewriting §293.54, including a requirement specifying that certain requirements under §293.54 should not apply to a BAN issued for engineering and land costs for regional facilities, or emergency repairs to district facilities, including the requirement to have a bond application on file.

The commission has withdrawn the proposed changes to §293.54 to further consider issues related to the BAN rules.

§293.201, District Acquisition of Road Utility District Powers

UDAC submitted draft language for §293.201(a) that specifies that the rule should reference that only portions of Texas Transportation Code, Chapter 441 apply, as well as specifying a definition for the term "district" and the term "commission."

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

UDAC submitted draft rule language showing that proposed §293.201(b) incorrectly references TWC, §54.235, instead of TWC, §54.234.

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

UDAC suggested deleting the requirement to notify a city in whose extraterritorial jurisdiction (ETJ) or corporate limit a district is located of the request to the commission for road powers.

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

UDAC suggested deleting the reference in the preliminary engineering report requiring a listing of other entities that could provide road services, and modifying the reference requiring a certified copy of preliminary plans to require a preliminary layout of road facilities. UDAC also suggested deleting the requirement to have an order approving preliminary plans.

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

UDAC suggested rule language to specify that a feasibility analysis requirement should be added to support that the combined projected tax rate does not exceed applicable limits in the commission's economic feasibility rules under §293.59.

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

UDAC suggested modifying the requirement for a narrative statement as to whom the road facilities benefit to demonstrate that the proposed road facilities benefit the district.

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

UDAC suggested deleting the proposed rule allowing road powers to be obtained at the time of creation.

The commission has withdrawn the proposed changes to §293.201 to further consider issues related to acquisition of road utility district powers.

§293.202, Application Requirements for Commission Approval

CEC commented that adopting the new rule is outside of the commission's specific statutory authority and the commission did not cite to any specific statutory authority for §293.202. CEC also commented that the position taken in the new rule is contrary to a position previously taken by the commission in regards to reviewing bonds for road projects.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

CEC commented that the Attorney General's office has reviewed and approved the issuance of road bonds without commission review or approval. CEC stated that the Attorney General found that the issuance of those bonds met all legal requirements and that commission approval was not required. CEC also commented that the review of road bonds by the commission is not necessary because commission review would be duplicative where the Attorney General has adopted a feasibility requirement for such bonds.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

CEC also commented that if the commission did have the authority to review road bonds that §293.202 as proposed contains certain limitations that are contrary to other, more specific law pertaining to the road powers of general law districts. CEC cites three examples: TWC, §53.003 that allows FWSDs to fund all road facilities under Texas Transportation Code, Chapter 257, and other general laws applicable to road districts; Texas Transportation Code, §257.003(f), which allows the district to determine whether a particular road acquisition benefits the district; and, Texas Transportation Code, §441.101, regarding reimbursements for money spent for road or improvements, inside or outside the district.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested rule language to specify that the requirement to obtain commission approval of road bonds should not apply to a fresh water supply district that has road powers under TWC, §53.029(c).

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested rule language to specify that the rule should list specific provisions of §293.44 that are not applicable to bonds for road facilities.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested rule language to specify that provisions regarding shared facilities under §293.44(a)(2) and (8) should not apply to road facilities; that only provisions in a cost-sharing agreement should apply.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested deleting the requirement for a 30% developer contribution in regards to road facilities.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested deleting rule language that specifies the requirement for evidence of acceptance by the entity that is to operate and maintain facilities at the time of bond application.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested rule language to specify that the financial requirements under §293.47(a) should be met in order to issue bonds for road facilities.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested adding rule language to specify that an approval statement of the preliminary plans by the entity that is to operate and maintain the roads should be provided, as referenced in Texas Transportation Code, §§441.014 - 441.017.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

UDAC suggested deleting the provision regarding funding of mitigation costs related to roads and the provision limiting funding of roads outside a district to one mile from its boundary.

The commission has withdrawn the proposed changes to §293.202 to further consider issues related to commission review of bonds for roads.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.1

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605466
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: April 14, 2006
For further information, please call: (512) 239-6087

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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11, §293.12

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §65.020 and §65.021, as amended by HB 1673, which provides that special utility districts may be created for specific purposes set out in a resolution; and, TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §65.020 and §65.021, and TWC, §5.103.

§293.12. Creation Notice Actions and Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for creation of a district by the commission in accordance with Texas Water Code (TWC), Chapter 51, multi-county Water Control & Improvement Districts or single county Water Control and Improvement Districts requesting additional powers; Chapter 54, Municipal Utility Districts; Chapter 55, Water Improvement Districts; Chapter 58, multi-county Irrigation Districts; Chapter 59, Regional Districts; Chapter 65, Special Utility Districts; and Chapter 66, Storm Water Control Districts, the executive director shall notify the chief clerk that the application is administratively complete.

(b) For those applications described in subsection (a) of this section, the chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The applicant shall cause the notice to be published as follows:

(1) notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district is proposed to be located with the last publication not later than the 30th day before the date on which the commission may act on the application, and

(2) not later than the 30th day before the date on which the commission may act on the application, the notice must be posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located.

(c) For those applications described in subsection (a) of this section, the commission may act on an application without holding a

public hearing if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

(d) For a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, which includes transfer of the certificate of convenience and necessity, the applicant shall also, unless waived by executive director, mail copies of the notice to customers of the water supply corporation and other affected parties at least 120 days prior to approval. Such notice shall include the following:

(1) name and business address of the district;

(2) a description of the service area involved;

(3) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(4) a statement that if a hearing is granted, persons may attend the hearing and participate in the process.

(e) If a petition for the creation of a Special Utility District in accordance with TWC, Chapter 65, contains a request for approval of an impact fee, the applicant shall comply with the notice provisions of §293.173 of this title (relating to Impact Fee Notice Actions and Requirements).

(f) Regardless of whether a public hearing is held or not, for an application for creation of a special utility district in accordance with TWC, Chapter 65, the commission may only consider a purpose for which the district is being created that is specified in the resolution.

(g) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows.

(1) The chief clerk shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The chief clerk shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The chief clerk shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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SUBCHAPTER C. SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

30 TAC §§293.20, 293.22, 293.23

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, Chapter 36, as amended by HB 1763, 79th Legislature, which revised notice, hearing, rulemaking, and permitting procedures for groundwater conservation districts (GCD) and management planning and joint management planning requirements for GCD; and, TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, Chapter 36, and TWC, §5.103.

§293.23. Petition Requesting Inquiry in Groundwater Management Area.

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by a groundwater conservation district (GCD) or a person with a legally defined interest in the groundwater within the groundwater management area (GMA) requesting an inquiry related to joint groundwater management planning in the GMA; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), §36.108 and 36.3011. Such petitions must be filed following the procedures prescribed by this section.

(b) Petition requesting commission inquiry. A GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if a district or districts refused to join in the GMA planning process or the GMA planning process failed to result in adequate planning. After the desired future conditions for the GMA have been adopted, a GCD or a person with a legally defined interest in the groundwater within the GMA may file a petition with the executive director to request a commission inquiry if the GMA planning process does not establish reasonable future desired conditions for the aquifers in the GMA.

(1) The petition must include documentation that demonstrates that joint planning meetings have been conducted by the presiding officers, or their designees, of each district located in whole or in part in the GMA. Documentation shall include:

(A) a certified copy of the board resolutions calling for the joint planning between the districts in the GMA;

(B) evidence that joint planning meeting notice was received by the districts in the GMA such as a return receipt for certified mail service;

(C) publishers' affidavits of joint planning meeting notice; and

(D) copies of joint planning meeting minutes and accepted handouts certified by the districts that attended the meetings.

(2) The petition must include a certified statement from the petitioning district's board of directors or from the person with a legally defined interest in the groundwater within the GMA that describes why the petitioner believes that adequate planning was not achieved in the GMA.

(3) The petition must provide evidence that:

(A) a district in the groundwater management area has failed to adopt rules;

(B) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the GMA established during the joint planning process;

(C) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(D) the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(4) The petitioner shall provide a copy of the filed petition to all groundwater conservation districts within the groundwater management area within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy of the petition was mailed to each GCD within the petitioner's GMA.

(5) Any GCD that is within the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(c) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence is not sufficient to show that the items contained in subsection (b)(1), (2), or (3) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district located outside the groundwater management area that is the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) According to TWC, §36.108, the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(d) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(e) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if the items contained in subsection (b)(1) - (3) of this section apply. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (e) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. APPOINTMENT OF DIRECTORS

30 TAC §293.32

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §54.103, as amended by SB 693, which provides additional qualifications for municipal utility board members; and, TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §54.103 and TWC, §5.103.

§293.32. Qualifications of Directors.

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code, Chapter 53 must be a registered voter of the district but need not own land subject to taxation in the district.

(2) A director of a regional district created for the purposes defined under Texas Water Code, §59.004 must be at least 18 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3) A director of a special utility district created for the purposes defined under Texas Water Code, §65.012, must be a resident citizen of this state and either own land subject to taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(4) A director of a stormwater control district created for the purposes defined under Texas Water Code, §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(5) A director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to Texas Water Code, §36.059(b).

(6) A person cannot be appointed to fill a vacancy on the board of a municipal utility district, under Texas Water Code, Chapter 54, if the person:

(A) resigned from that board:

(i) within two years preceding the vacancy date; or

(ii) on or after the vacancy date but before the vacancy is filled; or

(B) was defeated in a directors election held by that district in the two years preceding the vacancy date.

(7) A director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or other person providing professional services to the district.

(8) A director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See Texas Water Code, §49.052(d).)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.41, 293.44, 293.51

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §49.181(a), which provides that a district may not issue bonds, with certain exceptions, unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds; TWC, §49.181(a)(4), as amended by HB 828, which exempts certain refunding bonds from commission bond approval; TWC, §49.218(a), as amended by HB 1644, which authorizes districts to use bond proceeds to acquire a certificate of convenience and necessity, or contractual right to use capacity in facilities or acquire facilities; TWC, §54.209, as amended by HB 1208, which provides limitations on the use of eminent domain by municipal utility districts; and, TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §49.181(a), TWC, §49.181(a)(4), TWC, §49.218(a), TWC, §54.209, and TWC, §5.103.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes,

such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, sewage, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, under contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when

the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, sewer, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, sewer, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, sewer, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of convenience and necessity (CCN), contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection and Chapter 291, Subchapter G of this title (relating to Utility Regulations).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES

30 TAC §293.69

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, Chapters 51 and 54, as amended by HB 1644, which authorizes water control and improvement districts (WCID) and municipal utility districts (MUD) to enter into contracts with other districts or water supply corporations providing for the WCID or MUD to acquire facilities and then convey them to the other districts or WSC; and TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, Chapters 51 and 54, and TWC, §5.103.

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SUBCHAPTER J. UTILITY SYSTEM RULES AND REGULATIONS

30 TAC §§293.111 - 293.113

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, Chapters 51 and 54, as amended by HB 1644, which authorizes

water control and improvement districts (WCID) and municipal utility districts (MUD) to enter into contracts with other districts or water supply corporations providing for the WCID or MUD to acquire facilities and then convey them to the other districts or WSC; and TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement and TWC, Chapters 51 and 54, and TWC, §5.103.

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CHAPTER 295. WATER RIGHTS, PROCEDURAL

SUBCHAPTER A. REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL PROVISIONS

DIVISION 1. GENERAL REQUIREMENTS

30 TAC §295.17

The Texas Commission on Environmental Quality (commission) adopts new §295.17. Section 295.17 is adopted *without changes* to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3502) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The Rio Grande below Fort Quitman is regulated by the Rio Grande Watermaster under Texas Water Code, §11.326 and §11.327. 30 TAC Chapter 303, Operation of the Rio Grande, contains the Rio Grande Watermaster's rules. These rules recognize that the water rights in this area were adjudicated by a court, *State v. Hidalgo County Water Control & Improv. Dist. No. 18*, 443 S.W.2d 728 (Tex. App. - Corpus Christi 1969), *writ ref'd n.r.e.*, and that below Amistad Reservoir, water rights are not based on the priority system (first in time is first in right) as in the rest of the state.

Senate Bill (SB) 1902, and House Bill (HB) 2250, 78th Legislature, 2003, amended Texas Water Code (TWC), §11.3271, Powers and Duties of Rio Grande Watermaster, by amending Subsection (e), and adding Subsections (f) - (k). The provisions of the two bills are identical except for Subsection (j), relating to central repositories for documents.

Subsection (e) of the bills was amended to provide that the Rio Grande Watermaster's duties shall include activities relating to situations of imminent threat to public health and safety or the environment and required that the commission adopt rules which define situations of imminent threat and address the watermaster's duties in response to terrorism.

Subsections (f) - (i) provide that the commission may issue a permit which allows a person to place groundwater in the river and store it in a reservoir for release at a later time. The commission is to write rules which will account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the Rio Grande. The rules must also protect other water right holders which store water in the reservoir and be consistent with the 1944 Treaty between the United States and Mexico. The commission may not issue this permit if it determines that the water to be conveyed will degrade the water quality of the Rio Grande. These permits will be called water-in-transit permits.

Subsection (j) of the two bills requires the watermaster to maintain a place available to the public that will contain copies of documents which the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande. SB 1902 provides that the watermaster is the "official recorder" of "all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens" filed in connection with water rights. HB 2250 provides that the watermaster shall "maintain a central repository" that includes "certified copies of all instruments, including deeds, deeds of trust, and liens" filed in connection with water rights.

SB 1902 also provides that an instrument should be filed "in the same manner as required by other law for the same type of instrument," and that "the filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument." Further, an instrument filed under this law "shall be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law." HB 2250 does not include any of this quoted language, but instead provides that "a lien against a water right shall not be effective against third parties unless a certified copy of the instrument is filed with the watermaster," but that the law "does not affect the validity of a lien as between the holder of the water right and the holder of the lien or the requirements or validity of any other law governing the perfection and recordation of these instruments."

Both bills allow a fee to be collected for filing these instruments. SB 1902 further states that the commission shall adopt rules which "prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate."

To implement this legislation, the commission concurrently amends this chapter; 30 TAC Chapter 297, Water Rights, Substantive; and 30 TAC Chapter 303; Operation of the Rio Grande.

The adopted rule implements the provisions of the two bills. Concerning rules for terror threats, the adopted commission rules require the Watermaster to communicate with the agency Homeland Security Coordinator if activities are noted which may be suspicious. Concerning the bed and banks provisions of these two bills, the commission adopts procedures that will protect existing surface water right holders in the Rio Grande and will allow the commission and State of Texas to comply with the Rio Grande Treaty between the United States and Mexico.

Concerning the provisions of the bills relating to filing documents with the Rio Grande Watermaster, the two bills are in conflict

relating to the effect of filing and failure to file. The commission has determined that it should not adopt rules relating to the legal effect of filing or failing to file documents with the Rio Grande Watermaster because the commission does not regulate these matters. Therefore, the commission leaves the questions of the ramifications and effect of filing or failing to file documents with the commission to interpretation of the statutes by the courts. These rules would provide procedures for filing documents with the Rio Grande Watermaster.

SECTION DISCUSSION

Adopted new §295.17 provides that this chapter does not apply to water-in-transit permits. These permits are governed by Chapter 303.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent is to indicate that Chapter 295 does not apply to water-in-transit permits and to refer the reader to Chapter 303 for the requirements for those permits. The purpose of the rule is not to protect the environment or reduce risks to human health due to environmental exposure.

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the rulemaking concerning terror threats is not to reduce risks to human health from environmental exposure, but to provide new duties for the Rio Grande Watermaster relating to actions during terror threats. The rules relating to terror threats could be considered to protect the environment. However, these rules do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government, and these rules are not adopted under the general powers of the agency instead of a specific state law. The rules relating to bed and banks permits are not for the purpose of protecting the environment or protection from environmental exposure, but are to allow the conveyance and storage of groundwater in the river and to protect existing water rights. The recordkeeping rules are not for the purpose of protecting the environment or reducing risks from environmental exposure but are to provide a local public place for documents to be filed.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules in Chapter 295 and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. These rules are simply a procedural statement which refers the reader to another chapter for water-in-transit permit requirements. The rules do not affect private real property. Thus, these new rules do not constitute a taking under the Texas Government Code.

The commission evaluated the adopted rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. Concerning actions to be taken by the Rio Grande Watermaster due to terror threats, the rules are written in response to a real and substantial threat to public health and safety, are designed to significantly advance the health and safety purpose, and do not impose a greater burden than is necessary to achieve the health and safety purpose.

For the bed and banks permits and the recordkeeping requirements of the rules, none of the exceptions in §2007.003(b) apply to this rulemaking. The specific purpose of these adopted rules is to allow the commission to issue bed and banks permits for conveyance of groundwater to be stored in a reservoir, and to provide new duties for the Rio Grande Watermaster relating to bed and banks permits for conveyance of groundwater to be stored in a reservoir, recordkeeping, and monitoring water right activities in the Rio Grande basin. The adopted rules would substantially advance this stated purpose by providing procedures for each of these duties.

There are no burdens imposed on private real property due to these rules requiring the Rio Grande Watermaster to issue bed and banks permits and keep records. The rules on recordkeeping do not impact real property. The new rules relating to these bed and banks permits in the Rio Grande are specifically written to prevent any impact on their property because under the "Rule of Capture" persons may pump water from their land if they are not wasting the water or causing subsidence or other damage to other land. These rules do not affect that law. Additionally, a permittee will not be allowed to remove all of the water put into the river under the permit. This limit on how much water can be taken from the river is necessary to protect water right holders and to comply with the 1944 Treaty, both of which are required in Texas Water Code, §11.3271. Thus, these new rules do not constitute a taking under the Texas Government Code.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). The purpose of the rulemaking is to provide notice that this chapter does not apply to applications for water-in-transit in the Rio Grande and to provide a cross-reference to rules that are applicable to water-in-transit in the Rio Grande. Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

No public hearing was held on this rulemaking. The Rio Grande Watermaster Advisory Committee, the Rio Grande Regional Water Authority (RGRWA), and the Rio Grande Water Planning Group (RGRWPG) submitted comments generally supporting the rulemaking.

RESPONSE TO COMMENTS

The Rio Grande Watermaster Advisory Committee, the RGRWA, and the RGRWPG commented that the proposed rule does not negatively impact the existing water allocation system or water rights. Based on the general support received from public comments, no changes were made to the rule.

STATUTORY AUTHORITY

The new section is adopted under amendments to Texas Water Code, TWC, §11.3271, which provides that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande

under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new section is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adopted new section implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: April 28, 2006
For further information, please call: (512) 239-5017

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CHAPTER 297. WATER RIGHTS, SUBSTANTIVE

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

30 TAC §297.2

The Texas Commission on Environmental Quality (commission) adopts new §297.2. Section 297.2 is adopted *without changes* to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3505) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The Rio Grande below Fort Quitman is regulated by the Rio Grande Watermaster under Texas Water Code, §11.326 and §11.327. 30 TAC Chapter 303, Operation of the Rio Grande, contains the Rio Grande Watermaster's rules. These rules recognize that the water rights in this area were adjudicated by a court, *State v. Hidalgo County Water Control & Improv. Dist. No. 18*, 443 S.W.2d 728 (Tex. App. - Corpus Christi 1969), *writ ref'd n.r.e.*, and that below Amistad Reservoir, water rights are not based on the priority system (first in time is first in right) as in the rest of the state.

Senate Bill (SB) 1902, and House Bill (HB) 2250, 78th Legislature, 2003, amended Texas Water Code (TWC), §11.3271, Powers and Duties of Rio Grande Watermaster, by amending Subsection (e), and adding Subsections (f) - (k). The provisions of the two bills are identical except for Subsection (j), relating to central repositories for documents.

Subsection (e) of the bills was amended to provide that the Rio Grande Watermaster's duties shall include activities relating to situations of imminent threat to public health and safety or the environment and required that the commission shall adopt rules which define situations of imminent threat and address the watermaster's duties in response to terrorism.

Subsections (f) - (i) provide that the commission may issue a permit which allows a person to place groundwater in the river and store it in a reservoir for release at a later time. The commission is to write rules which will account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the Rio Grande. The rules must also protect other water right holders which store water in the reservoir and be consistent with the 1944 Treaty between the United States and Mexico. The commission may not issue this permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande. These permits will be called water-in-transit permits.

Subsection (j) of the two bills requires the watermaster to maintain a place available to the public that will contain copies of documents which the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande. SB 1902 provides that the watermaster is the "official recorder" of "all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens" filed in connection with water rights. HB 2250 provides that the watermaster shall "maintain a central repository" that includes "certified copies of all instruments, including deeds, deeds of trust, and liens" filed in connection with water rights.

SB 1902 also provides that an instrument should be filed "in the same manner as required by other law for the same type of instrument," and that "the filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument." Further, an instrument filed under this law "shall be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law." HB 2250 does not include any of this quoted language, but instead provides that "a lien against a water right shall not be effective against third parties unless a certified copy of the instrument is filed with the watermaster," but that the law "does not affect the validity of a lien as between the holder of the water right and the holder of the lien or the requirements or validity of any other law governing the perfection and recordation of these instruments."

Both bills allow a fee to be collected for filing these instruments. SB 1902 further states that the commission shall adopt rules which "prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate."

To implement this legislation, the commission concurrently amends this chapter; 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 303; Operation of the Rio Grande.

The adopted rule implements the provisions of the two bills. Concerning rules for terror threats, the adopted commission rules require the Watermaster to communicate with the agency Homeland Security Coordinator if activities are noted which may be suspicious. Concerning the bed and banks provisions of these two bills, the commission adopts procedures that will protect existing surface water right holders in the Rio Grande and will allow the commission and State of Texas to comply with the Rio Grande Treaty between the United States and Mexico.

Concerning the provisions of the bills relating to filing documents with the Rio Grande Watermaster, the two bills are in conflict relating to the effect of filing and failure to file. The commission has determined that it should not adopt rules relating to the legal effect of filing or failing to file documents with the Rio Grande Watermaster because the commission does not regulate these matters. Therefore, the commission leaves the questions of the ramifications and effect of filing or failing to file documents with the commission to interpretation of the statutes by the courts. These rules would provide procedures for filing documents with the Rio Grande Watermaster.

The new rule in this chapter would provide that water-in-transit permits are not governed by this chapter but that Chapter 303 contains the requirements for these water-in-transit permits.

SECTION DISCUSSION

Adopted §297.2 provides that this chapter does not apply to water-in-transit permits. These permits are governed by Chapter 303.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent is to indicate that Chapter 297 does not apply to water-in-transit permits and to refer the reader to Chapter 303 for the requirements for those permits. The purpose of the rule is not to protect the environment or reduce risks to human health due to environmental exposure.

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the rulemaking concerning terror threats is not to reduce risks to human health from environmental exposure, but to provide new duties for the Rio Grande Watermaster relating to actions during terror threats. The rules relating to terror threats could be considered to protect the environment. However, these rules do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government, and these rules are not adopted under the general powers of the agency instead of a specific state law. The rules relating to bed and banks permits are not for the purpose of protecting the environment or protection from environmental exposure, but are to allow the conveyance and storage of groundwater in the river and to protect existing water rights. The recordkeeping rules are not for the purpose of protecting the environment or reducing risks from environmental exposure but are to provide a local public place for documents to be filed.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules in Chapter 297 and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. These rules are simply a procedural statement which refers the reader to another chapter for water-in-transit permit requirements. The rules do not affect private real property. Thus, these new rules do not constitute a taking under the Texas Government Code.

The commission evaluated the adopted rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. Concerning actions to be taken by the Rio Grande Watermaster due to terror threats, the rules are written in response to a real and substantial threat to public health and safety, are designed to significantly advance the health and safety purpose, and do not impose a greater burden than is necessary to achieve the health and safety purpose.

For the bed and banks permits and the recordkeeping requirements of the rules, none of the exceptions in §2007.003(b) apply to this rulemaking. The specific purpose of these adopted rules is to allow the commission to issue bed and banks permits for conveyance of groundwater to be stored in a reservoir, and to provide new duties for the Rio Grande Watermaster relating to bed and banks permits for conveyance of groundwater to be stored in a reservoir, recordkeeping, and monitoring water right activities in the Rio Grande basin. The adopted rules would substantially advance this stated purpose by providing procedures for each of these duties.

There are no burdens imposed on private real property due to these rules requiring the Rio Grande Watermaster to issue bed and banks permits and keep records. The rules on recordkeeping do not impact real property. The new rules relating to these bed and banks permits in the Rio Grande are specifically written to prevent any impact on their property because under the "Rule of Capture" persons may pump water from their land if they are not wasting the water or causing subsidence or other damage to other land. These rules do not affect that law. Additionally, a permittee will not be allowed to remove all of the water put into the river under the permit. This limit on how much water can be taken from the river is necessary to protect water right holders and to comply with the 1944 Treaty, both of which are required in Texas Water Code, §11.3271. Thus, these new rules do not constitute a taking under the Texas Government Code.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). The purpose of the rulemaking is to provide notice that this chapter does not apply to applications for water-in-transit in the Rio Grande and to provide a cross-reference to rules that are applicable to water-in-transit in the Rio Grande. Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

No public hearing was held on this rulemaking. The Rio Grande Watermaster Advisory Committee, the Rio Grande Regional Water Authority (RGRWA), and the Rio Grande Water Planning Group (RGRWPG) submitted comments generally supporting the rulemaking.

RESPONSE TO COMMENTS

The Rio Grande Watermaster Advisory Committee, the RGRWA, and the RGRWPG commented that the proposed rule does not negatively impact the existing water allocation system or water rights. Based on the general support received from public comments, no changes were made to the rule.

STATUTORY AUTHORITY

The new section is adopted under amendments to Texas Water Code, TWC, §11.3271, which provides that the Rio Grande

Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new section is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adopted new section implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 303. OPERATION OF THE RIO GRANDE

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§303.1, 303.2, 303.21 - 303.23, 303.53, 303.55, and 303.72. The commission also adopts new §§303.18, 303.40, and 303.74 - 303.93. Sections 303.2, 303.22, 303.75, 303.86, 303.87, 303.90, and 303.93 are adopted *with changes* to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3508). Sections 303.1, 303.18, 303.21, 303.23, 303.40, 303.53, 303.55, 303.72, 303.74, 303.76 - 303.85, 303.88, 303.89, 303.91, and 303.92 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Rio Grande below Fort Quitman is regulated by the Rio Grande Watermaster under Texas Water Code, §11.326 and §11.327. Chapter 303, Operation of the Rio Grande, of 30 Texas Administrative Code (TAC) contains the Rio Grande Watermaster's rules. These rules recognize that the water rights in this area were adjudicated by a court, *State v. Hidalgo County Water Control & Improv. Dist. No. 18*, 443 S.W.2d 728 (Tex. App. - Corpus Christi 1969), *writ ref'd n.r.e.*, and that below Amistad Reservoir, water rights are not based on the priority system (first in time is first in right) as in the rest of the state.

Senate Bill (SB) 1902, and House Bill (HB) 2250, 78th Legislature, 2003, amended Texas Water Code (TWC), §11.3271, Powers and Duties of Rio Grande Watermaster, by amending Subsection (e), and adding Subsections (f) - (k). The provisions of the two bills are identical except for Subsection (j), relating to central repositories for documents.

Subsection (e) of the bills was amended to provide that the Rio Grande Watermaster's duties shall include activities relating to situations of imminent threat to public health and safety or the environment and required that the commission adopt rules which define situations of imminent threat and address the watermaster's duties in response to terrorism.

Subsections (f) - (i) provide that the commission may issue a permit which allows a person to convey groundwater in the river, which may include, but does not require, storage in a reservoir for release at a later time. The commission is to write rules which will account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the Rio Grande. The rules must also protect other water right holders which store water in the reservoir and be consistent with the 1944 Treaty between the United States and Mexico. Because groundwater will be introduced into the Rio Grande and will be conveyed in the river under this permit, this water must be shared with Mexico under the 1944 Treaty. The commission may not issue this permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande. These permits will be called water-in-transit permits.

Subsection (j) of the two bills requires the watermaster to maintain a place available to the public that will contain copies of documents which the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande. SB 1902 provides that the watermaster is the "official recorder" of "all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens" filed in connection with water rights. HB 2250 provides that the watermaster shall "maintain a central repository" that includes "certified copies of all instruments, including deeds, deeds of trust, and liens" filed in connection with water rights.

SB 1902 also provides that an instrument should be filed "in the same manner as required by other law for the same type of instrument," and that "the filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument." Further, an instrument filed under this law "shall be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law." HB 2250 does not include any of this quoted language, but instead provides that "a lien against a water right shall not be effective against third parties unless a certified copy of the instrument is filed with the watermaster," but that the law "does not affect the validity of a lien as between the holder of the water right and the holder of the lien or the requirements or validity of any other law governing the perfection and recordation of these instruments."

Both bills allow a fee to be collected for filing these instruments. SB 1902 further states that the commission shall adopt rules which "prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate."

To implement this legislation, the commission concurrently amends this chapter; 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 297, Water Rights, Substantive.

The adopted rules implement the provisions of the two bills. Concerning rules for terror threats, the adopted commission rules require the Watermaster to communicate with the agency Homeland Security Coordinator if activities are noted which may be suspicious. Concerning the bed and banks provisions of these two bills, the commission adopts procedures that will protect existing surface water right holders in the Rio Grande and will allow the commission and State of Texas to comply with the Rio Grande Treaty between the United States and Mexico.

Concerning the provisions of the bills relating to filing documents with the Rio Grande Watermaster, the two bills are in conflict relating to the effect of filing and failure to file. The commission has determined that it should not adopt rules relating to the legal effect of filing or failing to file documents with the Rio Grande Watermaster because the commission does not regulate these matters. Therefore, the commission leaves the questions of the ramifications and effect of filing or failing to file documents with the commission to interpretation of the statutes by the courts. These rules will provide procedures for filing documents with the Rio Grande Watermaster.

SECTION BY SECTION DISCUSSION

The adopted amendment to §303.1, General, would clarify which water rights will be regulated under Chapter 303, Operation of the Rio Grande. Also, the adopted amendment states that any other rules, regulations, and orders relating to water rights will apply to water rights regulated under Chapter 303 unless Chapter 303 expressly provides otherwise. These amendments are needed to describe what rules will apply to water rights in the Rio Grande below Fort Quitman.

A staff-initiated change was made to §303.2(11)(F) to properly identify the International Boundary and Water Commission. The adopted addition of new §303.2(19) is necessary to define the Treaty between the United States and Mexico because reference to the Treaty is made in the new rules for water-in-transit permits. Adopted new §303.2(23) is necessary to define "Water-in-transit" permits, which are required by HB 2250 and SB 1902. This definition of "Water-in-transit" tracks the language in the statutes. Section 303.2(19) - (21) is renumbered §303.2(20) - (22), and §303.2(22) and (23) is renumbered §303.2(24) and (25) because of these added definitions. Water-in-transit is groundwater that may or may not be stored in a reservoir for later use.

Adopted new §303.18 concerns threats to public health and safety and the environment and would provide that the Rio Grande Watermaster will implement the agency's Homeland Security Coordination Plan. Additionally, under §303.18, the Watermaster shall require water right holders to cease diversions if the Watermaster determines that continued diversion would pose a hazard to public health and safety and the environment. These provisions are necessary to implement the requirements of SB 1902 and HB 2250 that require that the Rio Grande Watermaster determine situations of threat and the duties he will perform.

The adopted amendment to §303.21 adds subsection (d), which provides that water-in-transit accounts are not eligible for allocation under §303.22, Allocations to Accounts, and that these accounts are regulated in Subchapters I and J of Chapter 303. These accounts are not subject to allocation to other accounts because the water is under contractual sale to a buyer. These additions to the rules are necessary for the allocation process for water right holders to work after water-in-transit permits have been issued.

Adopted amendments to §303.22(a) provide that this subsection allowing allocation does not apply to water-in-transit accounts. Also, the amendments to subsection (a), relating to allocations of water, provide that allocations to accounts shall be based on water in the usable storage of Falcon and Amistad Reservoirs minus the water-in-transit held in storage in these reservoirs. The amendment to §303.22(a)(4) specifically indicates that water in water-in-transit accounts are deducted from usable storage after the municipal, domestic, and industrial reserve water is deducted. The amount of water in the water-in-transit accounts must be deducted from the water that will be allocated to other accounts because the water in the water-in-transit accounts is not available for allocation. This water is going to the buyer of this groundwater. These rules are needed to provide how allocation will be done with the addition of this new type of permit. A staff-initiated change was made to §303.22(b) to properly reference definitions.

Adopted amendments to §303.22(f)(3) add water-in-transit accounts to accounts that will have water deducted when the operating reserve is less than zero acre-feet. Accounts will be deducted by the amount necessary to provide 48,000 acre-feet for the operating reserve. Once the operating reserve is back to 75,000 acre-feet, other accounts will be restored to the amount in the account before the negative allocation, but water-in-transit accounts will not be restored. This requirement is necessary because the water in water-in-transit accounts is specific water that has been purchased and that has been added to the river outside of the normal allocation process. Thus, using water that is normally in the Rio Grande to replace this additional water could injure water right holders who are allocated water that is normally in the Rio Grande.

Section 303.23 is adopted to be amended to delete water-in-transit from the water that can be distributed to water rights accounts in subsection (a). This subsection is necessary because requiring water for existing water right holders to be given to water-in-transit accounts would impair the rights of the existing water right holders. Adopted new subsection (d) provides that water available to water right holders above Amistad and all Rio Grande tributaries shall not be distributed to water-in-transit accounts. This section is necessary because water above Amistad is available to the water right holders in a priority system.

Adopted new §303.40 provides that Subchapter E, Amendments to and Sales of Water Rights, does not apply to water-in-transit permits. Amendments to and sales of water-in-transit permits are governed by Subchapters I and J of Chapter 303; therefore, this exclusion from §303.40 is necessary.

The adopted amendment to §303.53(b) provides that contracts of sale relating to water-in-transit contractual sales which are filed with the commission shall include an aerial photograph or United States Geological Survey topographic map with the location of the discharge point or points. This language needs to be added to the section because contracts of sale regarding water-in-transit permits will need to include photographs or maps of the discharge points, as well as diversion points, which are required in maps and photographs in the existing rule. This requirement for water-in-transit permits is necessary because the Rio Grande Watermaster needs to know where this water is coming into the river in order to properly administer all the water rights in the river.

The adopted amendments to §303.55(e) would prohibit buyer's or seller's water in storage accounts from exceeding their annual authorized amount while a buyer's or seller's Class A or Class

B storage may not exceed 1.41 times the water right holder's recognized amount in acre-feet. This change is included in this rule package to clarify to what type of storage the requirement relates.

The adopted amendments to §303.72(a) add "water-in-transit diversion" and "water-in-transit discharge" to the formula for calculating assessment rates for water right holders in the Rio Grande Watermaster's Division. Also, these two terms are defined in this subsection. These changes are necessary in order to assess water-in-transit permit holders for the watermaster's services.

Adopted new Subchapter I, §§303.74 - 303.90, sets out the requirements for obtaining a bed and banks permit for water-in-transit. These rules are necessary to provide the procedural requirements for preparing and filing an application for water-in-transit with the commission.

Adopted new §303.74, General, provides that Subchapter I is applicable to water rights permits for water-in-transit. Other rules and orders of the commission related to water rights are also applicable unless in conflict with the provisions of Subchapter I.

Adopted new §303.75 sets out the requirements for an application for a water-in-transit permit. The section specifies specific application contents, including a description of the water quality of the water to be discharged, the date of the adopted discharge, an analysis of the losses that must be calculated, and the maximum amount of water which may be stored in the reservoirs. The loss calculations will become part of the water-in-transit permit. The water source, including a hydrological determination regarding any interaction between surface water and groundwater, is also required because any pumping of groundwater that is connected to surface water would impact treaty obligations to Mexico. This rule is necessary to provide what an applicant must put in an application to obtain a water-in-transit permit.

Adopted new §303.76 relates to forms which will be provided to applicants. While the forms are not mandatory, the information required by the forms is mandatory. Requirements for supplemental information are set out.

Adopted new §303.77 describes how to prepare an application and when the application may be changed, and by whom.

Adopted new §303.78 would provide that the applicant must provide a name and address, as well as other information, even if acting as an agent for another. A partnership must designate that it is a partnership and a trustee must designate that it is a trustee.

Adopted new §303.79 would provide that the applicant must clearly state the name and location of the underground reservoir which will serve as the source of the groundwater. This information is necessary for the executive director to determine the water quality and location of the discharge.

Adopted new §303.80 would provide that the applicant must give the executive director the total specific amount of water to be discharged and diverted. This information is necessary for the watermaster to account for this water in the river and in the reservoir.

Adopted new §303.81 would provide that the application must include the method and rate of diversion for each diversion point, and would provide that the applicant provide the location of each discharge and diversion point. This information is necessary for the watermaster to administer water-in-transit permits and requires that the applicant provide the location of each discharge and diversion point.

Adopted new §303.82 contains requirements for who should sign the application. Requirements for who signs an application for individuals, joint applications, partnerships, estates, corporations, political subdivisions, and trustees are given. These requirements are necessary for the commission to ensure that signatories to these applications actually represent the applicant.

Adopted new §303.83 requires that the application be sworn. This requirement is necessary to ensure that the commission bases its permits on accurate information.

Adopted new §303.84 provides that the applicant provide information describing how the application addresses a water supply need in a manner that is consistent with the state water plan or the approved regional plan of the area. The applicant may also request a waiver. This requirement is necessary for the commission to comply with TWC, §11.134, which requires the commission to grant a water right permit only if the application addresses a water supply need in a manner consistent with the state or regional plan.

Adopted new §303.85 addresses filing fees for these applications. Subsection (a) provides that fees are to be submitted with the application and staff cannot further process an application without the fees. Subsection (b) sets out the filing, recording, and notice fees. The application fee is based on the total amount of water to be discharged. Amendments are $100 per right requested to be amended, and recording fees are $1.25 per page of application. Subsections (b)(3) and (c) set out that the applicant must pay the cost of any required mailed and published notice. These fees are necessary to reimburse the state for the expenses of processing an application for a water-in-transit permit. Subsection (d) sets out a one-time transit fee of $1.00 per acre-foot of water discharged. This fee is necessary to reimburse the state for use of the bed and banks of the river.

Under subsection (e), if the fee is over $1,000, the applicant must pay at least half, and then pay the rest within 180 days of receiving notice that the application is granted. The permit will be annulled if the fee is not paid. Subsection (f) provides that the total one-time transit fee shall not exceed $50,000. Subsection (g) provides that inquiries as to fees should be made in advance to the executive director. In case of a disagreement between the applicant and the executive director over the amount of the fee, the application will be filed "under protest" and the amount will be placed in suspense until the issue is resolved. Under subsection (h), all fees other than filing and recording fees will be returned to the applicant if they have not been expended or if the permit is not granted. The applicant must notify the executive director of his social security or federal identification number to receive these fees. These rules are necessary to administer the fee requirements for these permits.

Adopted new §303.86 provides notice requirements for water-in-transit applications. Subsection (a) requires notice by mail to the persons set out in subsection (d) and published notice as set out in subsection (c). Subsection (b) describes the required content of a notice. Subsection (c) requires published notice in each county in the Rio Grande water division at least 30 days before the commission or executive director considers the application. Subsection (d)(1) provides mailed notice must be received by water right holders within the Rio Grande division 30 days before the commission or the executive director considers the application. Subsection (d)(2) provides who received mailed

notice. These rules are required to provide notice of an application in compliance with Texas Water Code, Chapter 11. Section 303.86(d) is adopted with a staff-initiated change to the proposed text to facilitate a minor non-substantive correction.

Section 303.87 is adopted with staff-initiated changes to the proposed text. No further notice, other than the notice of the commission's agenda to consider the hearing request, of the time and place of the hearing is necessary other than advising the applicant, executive director, public interest council, and persons who have notified the commission of their interest in the application. Staff added all timely hearing requestors to the list of those to be advised since this rule is required for providing notice of hearings to interested persons.

Adopted new §303.88 would provide requirements for requesting a hearing on a water rights application. Subsection (b) provides that Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment) would govern hearing requests and commission consideration of hearing requests.

Adopted new §303.89 requires the commission to conduct public hearings under the provisions of Chapter 80 of this title (relating to Contested Case Hearings). Adopted new §303.90 provides that the executive director may issue a permit if the provisions of Chapter 50 of this title (relating to Actions on Applications and Other Authorizations) are met. These rules are necessary to ensure that procedural rules for hearings for water-in-transit permits are consistent with the procedural rules for hearings for other permits. Section 303.90 is adopted with staff-initiated changes to the proposed text to remove reference to §303.87 (relating to Notice of Hearing) since a reference to hearing notice is not relevant to a section relating to action taken on applications without public hearings.

Adopted new Subchapter J, §303.91 and §303.92, pertains to the administration of Rio Grande bed and banks permits for water-in-transit.

Adopted new §303.91(a) provides that the purpose of the subchapter is to describe the administrative responsibilities of the watermaster regarding water-in-transit permits. Subsection (b) sets out how the accounts in Amistad and Falcon Reservoirs are established, and how water-in-transit will be accounted for in those accounts. Water-in-transit accounts are the first accounts to be eliminated if there is not storage space left in the reservoir. Water lost due to storage space limitations will not be restored. These provisions are necessary to provide how accounting for water-in-transit accounts will be done to ensure existing water rights are protected.

Adopted new §303.91(c) requires that the watermaster keep records of all authorized discharges and diversions and advise the operator of those facts. All discharges and diversions must be metered. Notice to the watermaster is required for replacements of a permanent facility or any changes in rating and a change in location of a discharge or diversion point. Subsection (d) requires that the accounting be consistent with the 1944 Treaty with Mexico. No water can be credited to water-in-transit accounts unless it has been discharged to the Rio Grande under a water-in-transit permit and has been credited to the United States' share of water by the International Boundary and Water Commission (IBWC). Any accounting must be consistent with any accounting done by the IBWC. These rules are necessary to ensure that accounting for these permits will protect existing water rights and comply with the 1944 Treaty.

Adopted new subsection (e) provides that each diverter must obtain a certification from the watermaster prior to diversion and provides requirements for certifications. Subsection (f) provides that diverters shall be charged for their diversions and sets out provisions for this. Subsection (g) requires ownership records for diversions. Subsection (h) requires certification to be posted and provides requirements for that posting. Subsection (i) requires diverters to install and maintain measuring devices. The watermaster must approve the installation and operation, and the diverter shall bear the costs of these devices. Adopted new subsection (j) states that each diverter shall divert water only in accordance with the approved certification. These rules are necessary for the watermaster to be able to accurately enforce water rights in the Rio Grande.

Adopted new subsection (k) establishes requirements for reports to be made to the commission. Water right holders are responsible for reporting use based on their records. Adopted new subsection (l)provides that the watermaster shall maintain an accurate inventory of the water in Falcon and Amistad Reservoirs, including water-in-transit, and maintain accurate records and institute necessary procedures to perform this function. Adopted new subsection (m) provides that the watermaster shall submit monthly reports to each water right holder showing the status of the account. Water right holders must tell the watermaster of any errors in the report within 20 days of distribution of the report. Adopted new subsection (n) requires certification requests to be submitted in advance to allow for travel time. The watermaster may waive travel time in cases of excess flow in the river. These rules are necessary for the water right holders to have accurate information on which to base their decisions to request water.

Adopted new subsection (o) provides that the watermaster may not authorize "no charge water" to water-in-transit accounts. This rule is necessary because water-in-transit permits only apply to private groundwater discharged into the Rio Grande and by allowing such rights to divert "no charge water" existing water rights could be affected.

Adopted new §303.92 provides that any action of a watermaster may be appealed to the executive director by any person. This rule is necessary to provide a mechanism for a water right holder to obtain review of the watermaster's action.

Adopted new Subchapter K provides procedures for filing certified copies of instruments with the watermaster. Section §303.93 is adopted with staff-initiated changes to the proposed text to change "must" to "may" and to change "§295.31 and §295.32" to "Chapter 295, Subchapter A." This new section sets out what copies should be filed, when they should be filed, and the fee to be charged. The two bills relating to filing documents require that documents required to be filed in the TCEQ offices in Austin be filed in the watermaster's office as well. However, the bills do not require that other documents not required to be filed with the TCEQ offices in Austin with a water right application. Documents not required to be filed with the watermaster may be filed with the watermaster at the water right holder's option. The reference to §295.31 and §295.32 was changed to Chapter 295, Subchapter A because Subchapter A is broader and may cover other documents that are required to be filed for water rights permits. These rules are adopted to provide procedures to comply with SB 1902 and HB 2250, new §11.3271(j) of the Water Code.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. The intent of the rulemaking concerning terror threats is not to reduce risks to human health from environmental exposure, but to provide new duties for the Rio Grande Watermaster relating to actions during terror threats. The rules relating to terror threats could be considered to protect the environment. However, these rules do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government, and these rules are not adopted under the general powers of the agency instead of a specific state law. The rules relating to bed and banks permits are not for the purpose of protecting the environment or protecting from environmental exposure, but are to allow the conveyance and storage of groundwater in the river and to protect existing water rights. The recordkeeping rules are not for the purpose of protecting the environment or reducing risks from environmental exposure but are to provide a local public place for documents to be filed.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. Concerning actions to be taken by the Rio Grande Watermaster due to terror threats, the rules are written in response to a real and substantial threat to public health and safety, are designed to significantly advance the health and safety purpose, and do not impose a greater burden than is necessary to achieve the health and safety purpose.

For the bed and banks permits and the recordkeeping requirements of the rules, none of the exceptions in §2007.003(b) apply to this rulemaking.

The commission further evaluated these adopted rules and performed a preliminary assessment of whether these adopted rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these adopted rules is to allow the commission to issue bed and banks permits for conveyance of groundwater to be stored in a reservoir, and to provide new duties for the Rio Grande Watermaster relating to bed and banks permits for conveyance of groundwater to be stored in a reservoir, recordkeeping, and monitoring water right activities in the Rio Grande basin. The adopted rules would substantially advance this stated purpose by providing procedures for each of these duties.

There are no burdens imposed on private real property due to these rules requiring the Rio Grande Watermaster to issue bed and banks permits and keep records. The rules on recordkeeping do not impact real property. The new rules relating to these bed and banks permits in the Rio Grande are specifically written to prevent any impact on existing water rights in the Rio Grande. Any impact on landowners' groundwater is not a burden on their property because under the "Rule of Capture" persons may pump water from their land if they are not wasting the water or causing subsidence or other damage to other land. These rules do not affect that law. Additionally, a permittee will not be allowed to remove all of the water put into the river under the permit. This limit on how much water can be taken from the river is necessary to protect water right holders and to comply with the 1944 Treaty, both of which are required in Texas Water Code, §11.3271. Thus, these new rules do not constitute a taking under the Texas Government Code.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). The purpose of the rulemaking is to define situations of imminent threat to public health and safety and the environment, including terrorism response; provide for the method and procedures by which water-in-transit permits will be issued; and provide for the methods that the Rio Grande Watermaster will account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the bed and banks of the Rio Grande. Additionally, this rulemaking establishes procedures and fees for the Watermaster to maintain a central repository for all instruments that the commission requires to be filed in connection with water rights relating to the water division of the Rio Grande. None of these activities are identified in the rules. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

No public hearing was held on this rulemaking. The Rio Grande Watermaster Advisory Committee, the Rio Grande Regional Water Authority (RGRWA), and the Rio Grande Water Planning Group (RGRWPG) submitted comments generally supporting the rulemaking.

RESPONSE TO COMMENTS

The Rio Grande Watermaster Advisory Committee, the RGRWA, and the RGRWPG commented that the proposed rules do not negatively impact the existing water allocation system or water rights. Based on the general support received from public comments, no changes were made to the rule.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

30 TAC §303.1, §303.2

STATUTORY AUTHORITY

The amendments are adopted under amendments to Texas Water Code (TWC), §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted amendments are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

§303.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings.

(1) Account--The record of municipal and operating reserves; or the record of an allottee's water in storage in the Amistad-Falcon system, and the diversion of such water.

(2) Accounting period--From the last Saturday of a month at midnight to the last Saturday of the following month at midnight.

(3) Agent--A person designated by a water right holder to have the authority to request certification to divert, make diversions, and/or pay assessment charges.

(4) Allocation--The distribution of the United States' share of water stored in the Amistad-Falcon system to the various accounts.

(5) Allottee--A water right holder who has an account and who has the right to call on releases of water from the associated accounts.

(6) Assessment--The authorized charges against water rights holders levied by the commission to finance watermaster operations.

(7) Certification--Written authorization issued by the watermaster to divert water from the Rio Grande or its tributaries for a specific period of time.

(8) Diversion facility--Any pump, canal system, or other device.

(9) Diverter--A water right holder, an agent, or an exempt domestic and livestock user who takes water from the Rio Grande or its tributaries.

(10) Hydroelectric rights--A water right that authorizes the use of available flow for hydroelectric power generation. No account will be established for the holders of hydroelectric rights.

(11) Lower Rio Grande Valley--That portion of the Rio Grande Basin, including tributaries, in Texas from Falcon Dam downstream to the Gulf of Mexico, including that portion of the Nueces-Rio Grande Coastal Basin located in Starr, Hidalgo, Willacy, and Cameron Counties, Texas, whose source of water is the Rio Grande.

(A) Reach I is that portion of the Lower Rio Grande between Falcon Dam and the International Boundary and Water Commission streamflow gage at Fort Ringgold.

(B) Reach II is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage at Fort Ringgold and Anzalduas Dam.

(C) Reach III is that portion of the Lower Rio Grande between Anzalduas Dam and the Progreso Bridge.

(D) Reach IV is that portion of the Lower Rio Grande between the Progreso Bridge and the International Boundary and Water Commission streamflow gage near San Benito.

(E) Reach V is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage near San Benito and the Cameron County Water Control and Improvement District 6 river pumps.

(F) Reach VI is that portion of the Lower Rio Grande between Cameron County Water Control and Improvement District 6 river pumps and the International Boundary and Water Commission streamflow gage near Brownsville.

(G) Reach VII is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage near Brownsville and the Gulf of Mexico.

(12) Measuring device--A device designed to indicate flow rate and amount, with instantaneous readout in cubic feet per second (cfs) or gallons per minute (gpm) and a flow totalizer with a readout in acre-feet or gallons, to be accurate within 5.0%, said device to be approved by the watermaster. Any device operated and maintained by the International Boundary and Water Commission is considered satisfactory. On tributaries, any device approved by the watermaster is sufficient.

(13) Middle Rio Grande--That portion of the Rio Grande Basin including tributaries, in Texas upstream from Falcon Dam to Amistad Dam.

(A) Reach I is that portion of the Middle Rio Grande between Amistad Dam and the International Bridge at Del Rio.

(B) Reach II is that portion of the Middle Rio Grande between the International Bridge at Del Rio and the International Bridge at Eagle Pass.

(C) Reach III is that portion of the Middle Rio Grande between the International Bridge at Eagle Pass and the International Boundary and Water Commission streamflow gaging station at San Antonio Crossing.

(D) Reach IV is that portion of the Middle Rio Grande between the International Boundary and Water Commission streamflow gaging station at San Antonio Crossing and the International Bridge at Laredo.

(E) Reach V is that portion of the Middle Rio Grande between the International Bridge at Laredo and San Ygnacio.

(F) Reach VI is that portion of the Middle Rio Grande between San Ygnacio and Falcon Dam.

(14) No charge water--Storm and flood water in the Rio Grande downstream from Amistad Dam that is designated by the watermaster, in accordance with Texas Water Code, §11.0871, and with Texas Water Commission order dated August 4, 1981, and any subsequent orders, as being available for diversion and use by water rights holders.

(15) Nondiverter--An agent or a water right holder who has water delivered to him by a diverter.

(16) Proration period--The period determined on a monthly basis, when the United States' share of water in the Amistad-Falcon system is less than 50% of the total United States conservation storage.

(17) Pump operation report--That part of the certification which the diverter returns to the watermaster after recording the amount of water actually diverted during the certification period.

(18) Travel time--The time for released water to travel downstream to designated reaches on the Middle or Lower Rio Grande.

(19) Treaty--The 1944 water sharing treaty between the United States and Mexico, and all related amendments and minute orders adopted by the International Boundary and Water Commission.

(20) Tributary diverter--A water right holder, an agent, or an exempt domestic and livestock user on the Rio Grande below Fort Quitman and above Amistad Reservoir or on a tributary of the Rio Grande with no right to call for releases from Amistad or Falcon Reservoirs.

(21) Upper Rio Grande--That portion of the Rio Grande Basin, including tributaries, in Texas from Amistad dam upstream to Fort Quitman, excluding the Pecos and Devils watersheds.

(22) Usable balance--The quantity of water in acre-feet an allottee has available for use, and is based upon whichever is less:

(A) the sum of allottee's annual authorized amount of water minus actual use for the year to date, plus the allottee's contract water balance; or

(B) the amount in the allottee's storage account.

(23) Water-in-transit--Privately owned water, not including state water, that a person has pumped from an underground reservoir and that is in transit between the point of discharge into the Rio Grande and the place or the point of diversion by a person who has contracted with the owner of the water to purchase the water, and that may be stored in a reservoir for later use.

(24) Water right--A right acquired under the laws of the state to impound, divert, and/or use water.

(A) Class A water right--A water right in the Lower or Middle Rio Grande Basin designated as a Class A right and held under a certificate of adjudication, granted in the Adjudication of the Lower and Middle Rio Grande River in *State v. Hidalgo County Water Control & Improv. Dist. No. 18,* 443 S.W.2d 728 (Tex. App. - Corpus Christi 1969), *writ ref'd n.r.e.,* or issued by the commission. If converted to a domestic, municipal, and industrial (DMI) water right, a Class A water right is converted to 50% of the existing water right.

(B) Class B water right--A water right in the Lower or Middle Rio Grande Basin designated as a Class B right and held under a certificate of adjudication, granted in the Adjudication of the Lower and Middle Rio Grande River in *State v. Hidalgo County Water Control & Improv. Dist. No. 18,* 443 S.W.2d 728 (Tex. App. - Corpus Christi 1969), *writ ref'd n.r.e.,* or issued by the commission. If converted to a DMI water right, a Class B water right is converted to 40% of the existing water right.

(25) Water right holder--One who owns a water right.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
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SUBCHAPTER B. WATERMASTER--REGULATORY FUNCTIONS

30 TAC §303.18

STATUTORY AUTHORITY

The new section is adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new section is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. ALLOCATION AND DISTRIBUTION OF WATERS

30 TAC §§303.21 - 303.23

STATUTORY AUTHORITY

The amendments are adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted amendments are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

§303.22. Allocations to Accounts.

(a) Allocations to Middle and Lower Rio Grande accounts, which do not include water-in-transit accounts, shall be based on water in the usable storage of Falcon and Amistad Reservoirs minus the water-in-transit held in storage at Falcon and Amistad Reservoirs. Such storage shall be computed as the total storage in Amistad and Falcon Reservoirs as reported by the International Boundary and Water Commission on the last Saturday of each month, less the water-in-transit and the amount of water in dead storage, which is water behind the dams that cannot be released due to hydrologic restrictions. To determine the

amount of water to be allocated to the various accounts, computations shall be made in the following sequence:

(1) from the amount of water in usable storage, deduct 225,000 acre-feet to re-establish the reserve for municipal, domestic, and industrial uses;

(2) from the remaining storage, deduct the total end-of-month account balances for all Lower and Middle Rio Grande irrigation and mining allottees;

(3) from the remaining storage, deduct 75,000 acre-feet for the operating reserve;

(4) from the remaining storage, deduct the total amount of water held in storage from water-in-transit.

(b) The water available for allotment after the deductions under subsection (a) of this section, shall be divided into Class A and Class B. Class A rights include all Class A water rights in the Lower and Middle Rio Grande Basins, as defined in §303.2(24)(A) of this title (relating to Definitions); Class B rights include all Class B water rights in the Lower and Middle Rio Grande Basins, as defined in §303.2(24)(B) of this title. Class A allottees shall receive 1.7 times as much water as that allotted to Class B allottees.

(c) Allottees who do not put any of the water in their account to beneficial use within two consecutive calendar years shall have that account reduced to zero. No subsequent allocations will be made until the allottee advises the watermaster that water is expected to be used.

(d) At no time shall the watermaster allow an allottee to accumulate in storage more than 1.41 times the annual authorized right in acre-feet.

(e) No allocation will be made to a water right holder when the water right or a portion of the right does not identify a specific place or places of use. Only that portion of a water right which authorizes a specific place of use will receive an allocation based upon the number of acre-feet recognized to be used on that tract.

(f) If the amount of usable water is insufficient to carry out all the steps specified in subsections (a) and (b) of this section, the computations will be made in the specified sequence, with the following adjustments.

(1) If the watermaster determines there is insufficient water for allocation under subsection (b) of this section or other valid reasons for not allocating the available water, the unallocated storage after subsection (a)(3) of this section will be held for the next allocation period. In general, water will be allocated under subsection (b) of this section when there is at least 50,000 acre-feet available for that purpose.

(2) The watermaster may not allocate water to Class A and Class B water rights users until the operating reserve is at or above 75,000 acre-feet.

(3) If the balance available for the operating reserve is less than 75,000 acre-feet, but greater than zero acre-feet, then that amount will be the amount allocated to the operating reserve. If the operating reserve is less than zero acre-feet, the watermaster will deduct from the Class A, Class B, and water-in-transit accounts, via negative allocations, the amount necessary to provide 48,000 acre-feet for the operating reserve account. A negative allocation will be made on a pro rata basis, from all Class A, Class B, and water-in-transit accounts containing water at the time, based on the amount of water in such accounts. The watermaster will keep accurate records of the negative allocations affecting each Class A, Class B, and water-in-transit account. When the operating reserve has been restored to 48,000 acre-feet, negative allocations will cease. When the operating reserve has been restored to 75,000 acre-feet, and sufficient water is available, all accounts (excluding water-in-transit accounts) from which water has been deducted will be restored to the amount of water in each account prior to the negative allocation period and any new allotments will be made in accordance with subsections (a) and (b) of this section.

(g) For each month of a proration period, the total amount of water authorized to be used for that calendar year by each of the four water rights listed in the following table will be incrementally reduced or restored in the following manner. When the United States' share of storage in the Amistad-Falcon system is less than 50% of its total storage capacity, each 1.0% drop or rise in reservoir storage will reduce or increase the unprorated annual authorization by a corresponding amount listed under proration reduction in the following table. Once the prorated annual authorization has been reached, no further reductions will be made. During any month in which proration has been in effect, any allocation for the listed water rights will be based on the reduced unprorated annual amount. When conditions are such that it appears that the initiation of a proration period is imminent, the watermaster shall, at least two months in advance, advise the four affected water right holders of the anticipated proration.
Figure: 30 TAC §303.22(g) (No change.)

(h) The watermaster may take any actions appropriate to prevent the waste of water or to alleviate emergencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605481
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 26, 2006
Proposal publication date: April 28, 2006
For further information, please call: (512) 239-5017

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SUBCHAPTER E. AMENDMENTS TO AND SALES OF WATER RIGHTS

30 TAC §303.40

STATUTORY AUTHORITY

The new section is adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new section is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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SUBCHAPTER F. CONTRACTUAL SALES

30 TAC §303.53, §303.55

STATUTORY AUTHORITY

The amendments are adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted amendments are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER H. FINANCING RIO GRANDE WATERMASTER OPERATION

30 TAC §303.72

STATUTORY AUTHORITY

The amendment is adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted amendments are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights, and TWC, §5.701, which provides that the commission may charge fees for water rights applications.

This adoption implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER I. RIO GRANDE BED AND BANKS PERMITS FOR WATER-IN-TRANSIT

30 TAC §§303.74 - 303.90

STATUTORY AUTHORITY

The new sections are adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new sections are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights, and TWC, §5.701, which provides that the commission may charge fees for water rights applications.

This adoption implements TWC, §11.3271, and TWC, §5.103.

§303.75. Requirements for an Application to Convey Water-in-Transit in the Bed and Banks of the Rio Grande.

(a) The purpose of this section is to provide the application content requirements for a bed and banks permit authorization for water-in-transit in the Rio Grande under Texas Water Code, §11.3271.

(b) A person who intends to discharge private water that originates from an underground reservoir into the Rio Grande and wishes to divert and use the discharged water must submit an application to the commission containing the following information:

(1) the name, mailing address, and telephone number of the applicant;

(2) the location(s) of the proposed groundwater reservoir from which the water will originate identified on a United States Geological Survey (USGS) 7.5 minute topographical map(s);

(3) the location(s) of the point of the proposed discharge(s) into the Rio Grande and diversion(s) as identified on a USGS 7.5 minute topographical map(s);

(4) the appropriate ownership or lease documents evidencing applicant's authority to develop the proposed project;

(5) the source, including a hydrological determination regarding any interaction between the groundwater source and state waters, amount, and rates of the proposed discharge and diversion;

(6) a description of the quality of the water proposed to be discharged and a description of the Rio Grande water quality at the proposed discharge point with documentation that the discharge will not degrade the Rio Grande;

(7) the date of the proposed discharge of the groundwater into the Rio Grande;

(8) an analysis of the amount of water that will be lost under differing flow regimes to transportation, evaporation, seepage, channel, treaty accounting, or other associated losses for each reach of the Rio Grande from the point of discharge to Amistad or Falcon Reservoir, including losses associated with storage in these reservoirs, and carriage losses from these reservoirs to the point of diversion. The losses shall be quantified for each reach of the Rio Grande below Amistad Reservoir as listed in §303.2 of this title (relating to Definitions) and for the appropriate reaches above Amistad Reservoir;

(9) the maximum amount of water which may be stored in Amistad and/or Falcon Reservoir; and

(10) any other information the executive director may need to complete an analysis of the application.

(c) The method and calculation of any losses including, but not limited to, carriage, treaty accounting completed by the International Boundary and Water Commission (IBWC), storage, and that are associated with any permit issued under this section shall be quantified and made a provision of the permit and shall be subject to the review and approval of the executive director. The method of loss calculation shall be consistent with procedures used by the IBWC.

§303.86. Notice Requirements for Water-in-Transit Applications.

(a) At the time an application for a water-in-transit permit has been filed by the executive director with the chief clerk, the commission shall give notice by mail to those persons specified in subsection (d) of this section. At such time, the chief clerk shall furnish a copy of the notice to the applicant, and the applicant must publish notice, pursuant to subsection (c) of this section.

(b) A notice of application and commission action must:

(1) include the name and address of the applicant;

(2) include the date on which the application was received by the commission;

(3) include the date the application was filed by the executive director with the chief clerk;

(4) include that the executive director has determined that the application is administratively complete;

(5) include the application number;

(6) include the type of permit the applicant is seeking;

(7) include the purpose and extent of the proposed transfer of water;

(8) identify the source of supply, place of discharge, and the place where the water is to be diverted;

(9) specify the time and location where the commission will consider the application;

(10) identify all potentially affected groundwater districts;

(11) give any additional information the executive director considers necessary.

(c) The applicant must publish the notice in newspapers of general circulation in each county within the Rio Grande water division. The date of publication must be on or before the date of publication directed by the chief clerk.

(d) Notice by mail.

(1) The commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this subsection after the executive director has declared the application administratively complete.

(2) For an application for a water-in-transit permit pursuant to Texas Water Code, §11.3271 or for an amendment to a Texas Water Code, §11.3271 permit, notice must be mailed to:

(A) each claimant or appropriator of water within the Rio Grande water division below Fort Quitman, Texas, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(B) all groundwater districts potentially impacted by the application; and

(C) other persons who in the judgment of the commission might be affected.

§303.87. Notice of Hearing.

A hearing on an application may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest counsel, all hearing requestors, and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk will mail such notice to these persons not less than 30 days before the date of the hearing.

§303.90. Action on Application Without Public Hearing.

If no hearing requests are filed as provided for in §303.88 of this title (relating to Request for Public Hearing) the executive director may issue the permit if the requirements of Chapter 50 of this title (relating to Action on Applications and Other Authorizations) are met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2006.

TRD-200605485
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 26, 2006
Proposal publication date: April 28, 2006
For further information, please call: (512) 239-5017

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SUBCHAPTER J. ADMINISTRATION OF RIO GRANDE BED AND BANKS PERMITS FOR WATER-IN-TRANSIT

30 TAC §303.91, §303.92

STATUTORY AUTHORITY

The new sections are adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new sections are also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER K. FILING CERTIFIED COPIES OF INSTRUMENTS WITH THE WATERMASTER

30 TAC §303.93

STATUTORY AUTHORITY

The new section is adopted under amendments to Texas Water Code, TWC, §11.3271, which provide that the Rio Grande Watermaster's duties include activities related to situations of imminent threat to public health and the environment, storing water in a reservoir for release at a later time, water-in-transit that is being conveyed down the bed and banks of the Rio Grande under a permit and rules issued by the commission, and maintaining a central repository for the public that includes certified copies of instruments that the commission requires to be filed in connection with water rights in the lower, middle, or upper basin of the Rio Grande and that are subject to a water right. The adopted new section is also authorized by TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC, and TWC, §5.013(1), which provides that the commission has general jurisdiction over water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights.

This adoption implements TWC, §11.3271, and TWC, §5.103.

§303.93. Filing Certified Copies of Instruments with the Watermaster.

(a) Certified copies of all instruments required to be filed under Chapter 295, Subchapter A of this title (relating to Requirements of Water Rights Applications General Provisions) for permits, certified filings, or certificates of adjudication in the watermaster's jurisdiction must be filed with the watermaster. Certified copies of instruments not required to be submitted for permits, certified filings, or certificates of adjudication in the watermaster's jurisdiction may be filed with the watermaster. Documents required to be filed with the watermaster under this chapter must be filed with the watermaster.

(b) Persons must file two certified copies of each instrument with the watermaster.

(c) If an applicant is required to file an instrument listed in subsection (a) of this section in connection with an application, the applicant must also file two certified copies of the document with the watermaster at the same time that the applicant files the application with the executive director. For water rights which have already been issued, the water right holder must file these documents as soon as possible with the watermaster.

(d) For filing certified copies of the instruments described in subsections (a) - (c) of this section, the watermaster shall charge a fee which is identical to the fee charged by the county clerk of Cameron County for recordation of similar instruments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5107

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE
SUBCHAPTER I. SUPER-COMBINATION LICENSE REVENUE ALLOCATION

31 TAC §53.130

The Texas Parks and Wildlife Commission adopts new §53.130, concerning Super-combination License Revenue Allocation, with changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5760).

The change alters the calculation of revenue allocated to the licenses by changing the license price used within the formula from 90% of the price of the licenses to the undiscounted price of the licenses and by using survey utilization results. This change to the formula ensures that revenue from the sale of the super-combination and senior super-combination packages are allocated to all items sold within the packages in the same manner, based on the price of the item and the popularity of the item. The department has determined that revenue from the sale of licenses should be deposited in the Game, Fish, and Water Safety Account (Fund 9) in direct proportion to their price and utilization, as determined by user survey. The department's 2006 user survey indicates that 87.2 percent of super-combination license package purchasers engaged in fishing activities, while 94.6 percent of package purchasers engaged in hunting activities. The change is necessary in order to ensure that deposits to Fund 9 accounts accurately reflect both price and user utilization of both licenses and stamps sold within these packages.

The new rule establishes a methodology for determining the allocation of revenues from the sale of stamp endorsements (stamps) that are part of the super-combination hunting and fishing license package and the senior super-combination hunting and fishing license package.

Under Parks and Wildlife Code, Chapter 43, no person may fish in saltwater without having purchased a saltwater fishing stamp, no person may fish in public freshwater without having purchased a freshwater fishing stamp, no person may hunt a migratory game bird without having purchased a migratory game bird stamp, no person may hunt an upland game bird without having purchased an upland game bird stamp, and no person may hunt deer, turkey, or javelina during an archery-only season without having purchased an archery stamp.

Under Parks and Wildlife Code, §11.302, all revenue received from the sale of all types of hunting licenses, fishing licenses, and stamps must be placed in Fund 9. Parks and Wildlife Code, Chapter 43, further specifies how the department deposits and spends the proceeds from the sale of each type of stamp. Under §43.405, the net receipts from the sale of saltwater fishing stamps shall be spent for coastal fisheries enforcement and management. Under §43.656, the net proceeds from the sale of the migratory game bird stamp may be used only for the management of and research concerning migratory game birds; the acquisition, lease, or development of migratory game bird habitats; contracts, donations, and grants; and only in a manner that addresses the needs of migratory birds in this state. Under §43.658, the net proceeds from the sale of the upland game bird stamp may be used only for the management of and research concerning upland game birds; the acquisition, lease, or development of upland game bird habitats; contracts, donations, and grants; and only in a manner that addresses the needs of upland game birds in this state. Under §43.805, the net receipts from freshwater fishing stamp sales may be spent only for the repair, maintenance, renovation, or replacement of freshwater fish hatcheries in this state; the purchase of game fish that are stocked into the public water of this state; or the restoration, enhancement, or management of freshwater fish habitats. The net proceeds from the archery stamp must be deposited in the Game, Fish, and Water Safety Account and may be spent for any purpose authorized for that account. As a result, the net proceeds from the sale of each stamp, except for the archery stamp, are to be used in a way that is directly related to the type of stamp sold.

Prior to 1996, stamps had to be purchased separately from hunting and fishing licenses, making it an easy matter for the department to determine from direct sales how much revenue should be placed in each stamp fund. When stamps are sold separately, the amount of net proceeds placed in each stamp fund is a function of the price and the popularity of the stamp. In 1996 the department created the super-combination hunting and fishing license as an option for customers to obtain the hunting license, the fishing license, and all required stamps in one package. Under Parks and Wildlife Code, Chapter 50, all combination licenses must be sold at less than the combined cost of the individual licenses, permits, or stamps included in the package. The super-combination license package is very popular, but because it is required by statute to be discounted, the department must allocate revenue to respective stamp accounts according to a formula.

For purposes of discussion, all figures provided are based on the current prices of the super-combination license package and the licenses and stamps contained in that package, but the proposed formula would be the same for the senior super-combination package. The undiscounted value of all items contained in a super-combination license package is $82: hunting license ($23), fishing license ($23), saltwater stamp ($10), freshwater stamp ($5), upland game bird stamp ($7), migratory game bird stamp ($7), and archery stamp ($7). The sale price of the super-combination license package is $64, or approximately 78% of the face value of the licenses and stamps contained in the package.

Under the rule as adopted, the revenue for hunting and fishing licenses as well as each of the stamps would be allocated based on the undiscounted price of each item and the popularity of each item. The popularity of each item would be based on the number of super-combination purchasers engaging in the activity requiring the license or stamp as determined by survey. The department will determine the utilization of each item by means of an annual survey of the hunting and fishing habits of super-combination license users.

The allocation formula would use the price of each item and the number of persons (determined by survey) engaging in the activity for which the item is required to develop a weighted utilization factor for each item, which would then be used to calculate the relationship of each item's weighted utilization factor to total item weighted utilization. This value would represent a relative weighted utilization for each item, which would then be multiplied by the super-combination or senior super-combination package net revenue to yield the amount to be allocated to each item, and to each fund account.

The rule as adopted will function by determining the dollar-value allocation of the various components of a super-combination hunting and fishing license package for the purposes of compliance with statutory provisions governing the dedication of license and stamp revenues.

The department received no comments concerning adoption of the proposed rule.

The new rule is adopted under Parks and Wildlife Code, §50.002, which authorizes the commission to establish fees for combination licenses.

§53.130. Super-Combination License Revenue Allocation.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Gross receipts--the total amount received from the sale of a super-combination license package before any commission or any other collection cost is deducted.

(2) License--the hunting license and fishing license included in the super-combination license package.

(3) Net receipts--gross receipts less any commission and/or other collection cost.

(4) Original price--the price of a license or stamp if sold separately rather than as part of a package.

(5) Purchaser utilization--the use of a license or stamp included in the super-combination license package by the purchaser of a super-combination license package.

(6) Stamp--any stamp included in the super-combination license package.

(7) Super-combination license package (package)--those licenses and stamps listed in §53.3(7) and (8) of this title (relating to Combination Hunting and Fishing License Packages).

(b) Net receipts from the sale of a package shall be allocated to each license and stamp in the package by means of a relative weighting calculated by using both the original price of the licenses and stamps and purchaser utilization as established by annual survey.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: October 29, 2006
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.1

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or the system) adopts amendments to §25.1 concerning requirements for employment qualifying for membership in TRS. Amended §25.1 is adopted with one change to the text as published in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5899).

Section 25.1 establishes the requirements for employment qualifying for membership in TRS. Employment for one-half or more of the standard workload is one of the eligibility requirements. Supplemental information provided to TRS covered employers has for years included hourly minimums for positions that have no equivalent full-time position in order for the position to be eligible for TRS membership. A crossing guard is an example of a typical part-time position for which there is usually no equivalent full-time employment. The adopted amendments to the rule provide that, if there is no equivalent full-time employment for a non-certified position, the minimum number of hours per week that will qualify the position for TRS membership is 15 hours. If there is no equivalent full-time employment for a certified position, the minimum number of hours per week under the amended rule that will qualify the position for TRS membership is 20 hours. The amendments incorporate longstanding interpretations of the rule and ensure fair and consistent application of membership eligibility requirements.

Further, before the rule was amended, it did not expressly state how positions with varied work schedules should be evaluated for membership eligibility. The adopted language requires the number of hours worked per week in a calendar month to be averaged to determine if the position is eligible for membership, clarifying how positions with varied work schedules are treated for membership eligibility purposes and ensuring that all persons eligible for membership are reported to TRS. Under the adopted rule, if the average number of hours worked per week equals or exceeds one-half of the hours required for a similar full-time position, then the position is eligible for membership in TRS. For instance, if a counselor is required to work 8 1/2 hours per day for three days every other week but only for two days a week during the remaining weeks of the month, the counselor is not working a 20-hour week every week. Under the amended rule, however, the counselor would be working an average of 21.25 hours per week and, therefore, the counseling position would be eligible for TRS membership and the employer must report it as such.

The Board adopted the amended section with one change to the text of the proposed rule as published, to wit, adding language clarifying that the basis under the rule for calculating the average number of hours worked for positions requiring a varied work schedule is the average number of hours worked *per week* within a calendar month, a change that is a logical outgrowth of the proposed rule and does not materially alter the issues raised in the proposed rule.

TRS received no public comments on the proposed amendments.

Statutory Authority: §825.102, Government Code, which authorizes the TRS Board to adopt rules for eligibility for membership. Cross-reference to Statute: §821.001, Government Code, concerning definitions, including those for "employee" and "membership service," and §822.001, Government Code, concerning TRS membership requirement.

§25.1. Full-time Service.

Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions

is defined as regular, full-time service eligible for membership. Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of the preceding sentence if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more in one school year. Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position. If there is no full-time equivalent of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15. If there is no full-time equivalent of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 2006.

TRD-200605454
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: October 25, 2006
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For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.7, concerning Training Provider Advisory Boards, without changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5063) and will not be republished.

The amendment to subsection (c) is changed to allow the chief administrator to appoint the advisory board chairman. Subsection (l) is amended to reflect the effective date for this change.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.225, Program and School Requirements; Advisory Board.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 4, 2006.

TRD-200605422
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: December 1, 2006
Proposal publication date: June 23, 2006
For further information, please call: (512) 936-7717

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.11, concerning Legislatively Required Continuing Education for Licensees, with changes to the proposed text as published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 5064).

In subsection (e) the language "constable and" failed to be deleted in the proposed text when submitted for publication with the *Texas Register*. This section should read as "(e) Each deputy constable shall also complete a 20 hour course of training in civil process during each current training cycle. The commission may waive the requirement for civil process training if:"

Subsection (e)(1) and (2) are amended to reflect changes due to amended legislation that would not require a deputy constable to take a 20 hour training on civil process, if the deputy constable does not perform civil process duties. Subsection (f) is amended by changing the notification method to match the law. Subsections (g) and (h) are amended and added new language due to amended legislation of §1701.353(b), which requires the Commission to seek disciplinary action rather than expiration of license. Subsections (j) and (k) are deleted because they have expired. Subsection (m) is amended to reflect the effective date for these changes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code, §1701.251, Training Programs; Instructors, §1701.352, Continuing Education Programs, §1701.353(b), Continuing Education Procedures, and §1701.354, Continuing Education for Constables and Deputy Constables.

No other code, article, or statute is affected by this adoption.

§217.11. Legislatively Required Continuing Education for Licensees.

(a) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or

public security officer it appoints or employs a continuing education program at least once every 24 month unit of a training cycle.

(b) The legislatively required continuing education program for individuals licensed as peace officers shall consist of 40 hours of training every 24 month unit of a training cycle. This rule does not limit the number of hours of continuing education an agency may provide to each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs.

(c) Part of the legislatively required peace officer training must include the curricula and learning objectives developed by the commission, to include:

(1) civil rights, racial sensitivity, and cultural diversity during each current training cycle;

(2) the recognition and documentation of cases that involve child abuse or neglect, family violence, sexual assault, issues concerning sex offender characteristics during each current training cycle. If an agency chief administrator determines these subjects to be inconsistent with the peace officer's assigned duties, the chief administrator may substitute other training determined to be consistent with the officer's assigned duties and report the substitution to the commission; and

(3) supervision issues for each peace officer appointed to their first supervisory position, this training must be completed within 24 months following the date of appointment as a supervisor.

(d) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall meet the requirements in subsection (c)(1) of this section.

(e) Each constable and deputy constable shall also complete a 20 hour course of training in civil process during each current training cycle. The commission may waive the requirement for civil process training if:

(1) the constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities; or

(2) the constable or deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.

(f) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(g) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(h) The commission may suspend or deny renewal of a license for failure to complete the legislatively required continuing education program at least once every training unit.

(i) The commission may take action against a licensee for failure to complete the required training in either or both of the 24 month units within a training cycle.

(j) Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this section beginning in the first complete 24 month unit immediately following the date of licensing.

(k) All peace officers must meet all continuing education requirements except where exempt by law.

(l) Licensees who have met the current legislatively required continuing education will have their license(s) automatically renewed on the last day of the training cycle unit.

(m) The effective date of this section is December 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 4, 2006.

TRD-200605423

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: December 1, 2006

Proposal publication date: June 23, 2006

For further information, please call: (512) 936-7717

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6383), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 518, Subchapter A, §518.1 and §518.2, Employee Training Rules, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts, without change, the sections since they govern the State Board's program for employee training. This completes the State Board's review of 31 TAC Chapter 518, Subchapter A, Employee Training Rules.

TRD-200605495
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: October 6, 2006

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Pursuant to the notice of proposed rule review published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6383), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 523, §§523.1 - 523.8, Agricultural and Silvicultural Water Quality Management, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts, without change, the sections since thy govern the State Board's program for agricultural and silvicultural water quality management established by the Agriculture Code of Texas, Chapter 201. This completes the State Board's review of 31 TAC Chapter 523, Agricultural and Silvicultural Water Quality Program.

TRD-200605525
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: October 9, 2006

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Pursuant to the notice of proposed rule review published in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6383), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 525, Subchapter A §§525.1 - 525.9, Audit Requirements for Soil and Water Conservation Districts, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts, without change, the sections since they govern the State Board's program for auditing the financial records of soil and water conservation districts. This completes the State Board's review of 31 TAC Chapter 525, Subchapter A, Audit Requirements for Soil and Water Conservation Districts.

TRD-200605524
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: October 9, 2006

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §68.80(a)

Estimated Construction Cost	Plan Review Fee	Project Filing Fee	Inspection Fee
$50,000 - $200,000	$250	$175	$350
$200,001 - $500,000	$315	$175	$375
$500,001 - $1,000,000	$380	$175	$400
$1,000,001 - $5,000,000	$445	$175	$445
$5,000,001 - $10,000,000	$575	$175	$575
$10,000,001 - $15,000,000	$620	$175	$620
$15,000,001 - $25,000,000	$785	$175	$785
$25,000,001 - $50,000,000	$955	$175	$955
$50,000,001 - $75,000,000	$1175	$175	$1175
> $75,000,000	Contact TDLR	$175	Contact TDLR
Late Project Filing Fee		$300	
Preliminary Review Fee		$145 each	
State Lease Inspection (no construction)		$225 per lease	
Special Inspection Fee		$215 per hour, one hour minimum	
Variance Application Fee		$175 each	
Variance Appeal Fee		$200 each	
Texas Accessibility Academy Fee		$150	

Registered Accessibility Specialists	
Application for Certificate of Registration	$300
Registration Renewal	$250
Examination	$100
Wall Certificate Duplicate or Replacement	$25
Wallet Card Duplicate or Replacement	$25

Figure: 40 TAC Chapter 809 -- Preamble

Chapter 809
SUMMARY OF PROPOSED RULE CHANGES

Existing Section	Description	Action	Proposed Section	Description
809.1(a)	Short title & purpose	Redesignated & Revised	809.1(a)-(b)	Short title & purpose
		Added	809.1(c)	Rules apply to Commission, Boards, parents, providers
809.1(b)-(c)	No certified Board; TOT	Removed		
809.2(1)	Definition: Board	Removed		
809.2(2)	Definition: Child Care	Redesignated & Revised	809.2(4)	Definition: Child Care Services
809.2(3)	Definition: Commission	Removed		
809.2(4)	Definition: Grant Recipient	Removed		
809.2(5)	Definition: LWDB	Removed		
809.2(6)	Definition: Parent	Redesignated & Revised	809.2(14)	Definition: Parent
809.2(7)	Definition: Provider	Redesignated & Revised	809.2(16)	Definition: Provider
809.2(8)	Definition: SACC Provider	Removed		
809.2(9)	Definition: TANF	Removed		
		Added	809.2(1)	Definition: Attending job training/education
		Added	809.2(3)	Definition: Child Care Contractor
		Added	809.2(5)	Definition: Child Care Subsidies
		Added	809.2(7)	Definition: Educational program
		Added	809.2(10)	Definition: Improper payments
		Added	809.2(11)	Definition: Job training
		Added	809.2(12)	Definition: Listed family home
		Added	809.2(15)	Definition: Protective services
		Added	809.2(19)	Definition: Residing with
		Added	809.2(21)	Definition: Working
809.4	Waiver request	Redesignated	809.3	Waiver request
809.5(a)	Definition: combat deployment	Redesignated &	809.2(13)	Definition: Military deployment

		Revised		
809.5(b)	Continued care for combat deployment	Redesignated & Revised	809.54(d)	Continuity of care: military deployment
809.5(c)	Combat deployment; Board actions to continue care	Removed		
809.11(a)-(d)	Board responsibilities (general)	Revised	809.11(a)-(d)	Board responsibilities (general)
809.12(a)	Board plan	Redesignated	809.12(a)-(c)	Board plan
809.12(b)	Board policies	Redesignated	809.13(a)-(c)	Board policies
		Added	809.13(d)	Required Board policies
809.12(c)	Board coordination of policies	Redesignated	809.14(a)	Board coordination of policies
		Added	809.14(b)	Board coordination of svcs
809.13	Ensuring parent choice by training providers	Removed		
809.14(a)-(c)	Consumer education	Redesignated & Revised	809.15(a)-(c)	Consumer education
809.15(a)-(e)	Quality improvement activities	Redesignated	809.16(a)-(e)	Quality improvement activities
809.16	Procurement	Removed		
809.17	Management of finances	Removed		
809.18	Information mgmt & reporting	Removed		
809.19	Performance standards	Removed		
809.20(a)	Leveraging local funds	Redesignated	809.17(a)(1)	Leveraging local funds
809.20(b)	Local funds accepted	Redesignated & Revised	809.17(b)	Local funds accepted
809.20(c)(1)	Boards shall secure local funds	Removed		
809.20(c)(2)	Securing additional excess funds	Redesignated	809.17(a)(2)	Securing additional excess funds
809.20(c)(3)	Local match eligible for incentive awards	Redesignated	809.17(a)(3)	Local match eligible for incentive awards
809.20(d)	Submitting local funds	Redesignated	809.17(c)	Submitting local funds
809.20(e)	Completing local funds	Redesignated & Revised	809.17(d)	Completing local funds
809.20(f)	Monitoring local funds	Redesignated	809.17(e)	Monitoring local funds
809.41(a)	General provider requirements	Redesignated & Revised	809.91(a)	Minimum provider requirements
		Added	809.91(c)	Boards shall not place requirements on providers above the licensing requirement or have the effect of

				monitoring for licensing compliance
		Added	809.92(a)	Provide written notice of and agree to provider requirements
		Added	809.92(c)	Providers shall not charge the difference to parents (for parents exempt from parent share of cost)
		Added	809.92(d)	Boards may develop policies related to charging the difference to all parents
809.41(b)	Boards ensure that providers comply with health & safety requirements	Removed		
809.42(a)	Minimum provider requirements	Redesignated & Revised	809.2(17)	Definition: Provider
809.42(b)(1)	Provider compliance with agreement	Removed		
809.42(b)(2)	Provider not on corrective action	Removed		
809.42(c)	Reporting violations	Redesignated	809.91(d)	Reporting violations
809.43	Provider agreements	Removed		
809.44	Provider general liability	Removed		
809.46(a)	Assessing share of cost (CCDF)	Redesignated & Revised	809.19(a)	Assessing share of cost (CCDF)
809.46(b)	Assessing share of cost (non-CCDF)	Redesignated	809.19(b)	Assessing share of cost (non-CCDF)
809.46(c)	Provider collecting share of cost prior to svcs	Redesignated & Revised	809.92(b)(1)	Provider collecting share of cost prior to svcs
809.46(d)	Provider collecting share of cost	Redesignated & Revised	809.92(b)(1)	Provider collecting share of cost
809.46(e)	Remedies for non-payment of share of cost	Redesignated & Revised	809.19(c)	Remedies for non-payment of share of cost
809.47(a)-(b)	Reduction & waiving share of cost	Redesignated & Revised	809.19(d)-(e)	Reduction & waiving share of cost
		Added	809.19(f)	Parent share of cost assessed at $0
809.48(a)	Board policy on attendance	Redesignated & Revised	809.13(d)(13)	Board policy on attendance
809.48(a)	Provider documenting attendance	Redesignated & Revised	809.92(b)(3)(A)	Provider documenting attendance

809.48(b)	Provider informing of absences	Redesignated & Revised	809.92(b)(3)(B)	Provider informing of absences
809.48(c)	Provider failure to keep attendance	Redesignated & Revised	809.114 & 809.115	Compliance with Commission rules and Board policies.
809.61(a)	Qualifications for relative providers	Redesignated & Revised	809.2(18)	Definition: Relative child care provider
809.61(b)	Number of children in relative care	Redesignated & Revised	809.93(c)	Number of children in relative care
809.62(a)	Qualifications for regulated self-arranged child care (SACC)	Removed		
809.62(b)	CPS request for regulated SACC	Redesignated & Revised	809.49(b)	CPS request for specific provider
809.62(c)	Requirements for listed homes	Redesignated & Revised	809.91(b)	Requirements for listed homes
809.63(a)	Reimbursements for SACC	Redesignated & Revised	809.93(a)	Provider reimbursements
809.63(b)	SACC Declaration of Services	Redesignated & Revised	809.93(b)	Provider Declaration of Services
809.71(a)	Parent choice of range of providers	Revised	809.71(1)	Parent right: choice of providers
809.71(b)(1)-(2)	Parent right to visit provider; assistance in choosing	Revised	809.71(2)-(3)	Parent right: visit provider; assistance in choosing
		Added	809.71(4)	Parent right: informed of policy regarding providers charging parents
809.72(1)-(6)	General parent rights	Redesignated & Revised	809.71(5)-(10)	Parent rights
809.73	Eligibility documentation	Redesignated & Revised	809.72	Eligibility documentation
809.74	Enrollment agreements	Removed		
809.75(a)(1),(2),(4),(5)	Parent report income, family size, work/training, other	Redesignated & Revised	809.73(a)(1),(2),(3),(5)	Parent report income, family size, work/training, other
809.75(a)(3)	Parent report loss of TANF, SSI	Removed		
		Added	809.73(a)(4)	Parent report other subsidies
809.75(b)	Failure to report changes	Redesignated & Revised	809.73(b)	Failure to report changes
809.75(c)	Grounds for suspected fraud	Redesignated	809.73(c)	Grounds for suspected fraud

809.76(a)	Parent appeal requests	Redesignated & Revised	809.74(a)	Parent appeal requests
809.76(a)	Appeal for child in-home protective services	Redesignated & Revised	809.74(c)	Appeal for child in-home protective services
809.76(b)	Inform parents of hearing procedures	Redesignated & Revised	809.71(14)	Parent right: hearing procedures
809.77	Parent's right to withdraw	Redesignated & Revised	809.71(11)-(12)	Parent right: to withdraw
		Added	809.71(13)	Parent right: to be informed of reporting reqs.
809.78(a)	Parent responsibility agreement (PRA)	Redesignated &Revised	809.76(a)	parent responsibility agreement (PRA)
809.78(b)(1)	PRA: paternity, child support	Redesignated & Revised	809.76(b)(1)(A)	PRA: child support/paternity, cooperating with the OAG
		Added	809.76(b)(1)(B)	PRA: documenting non-OAG managed cases
809.78(b)(2)-(3)	PRA: controlled substances/school attendance	Redesignated & Revised	809.76(b)(2)-(3)	PRA: controlled substances/school attendance
809.78(c)	PRA: failure to comply may result in sanctions	Removed		
809.79(a)(1)	PRA: sanctions, exceptions: Definitions	Removed		
809.79(a)(2)	PRA: failure to comply shall result in sanctions	Redesignated & Revised	809.76(c)	PRA: failure to comply shall result in sanctions
809.79(b)(1)	PRA: exceptions, Definitions	Removed		
809.79(b)(2)(A)-(C)	PRA: exceptions (reasonable effort, incest, domestic violence)	Redesignated & Revised	809.77(1)-(3)	PRA: exemptions (reasonable effort, incest/rape, domestic violence)
		Added	809.77(4)-(5)	PRA: exemption, adoption
		Added	809.77(6)	PRA: exemption, harm to the child
		Added	809.77(7)	PRA: exemption, harm to the parent
809.91(1)	Definition: Child Care	Redesignated & Revised	809.2(2)	Definition: Child
809.91(2)	Definition: Family	Redesignated & Revised	809.2(8)	Definition: Family
809.91(3)	Definition: Household dependent	Redesignated & Revised	809.2(9)	Definition: Household dependent

809.92(a)	General eligibility: funding limitations	Removed		
809.92(b)(1)	General eligibility: income	Redesignated & Revised	809.41(a)(2)(A)	General eligibility: income
809.92(b)(2)	General eligibility: work, training, education	Redesignated & Revised	809.41(a)(2)(B)	General eligibility: work, training, education
809.92(b)(3)	General eligibility: child's age	Redesignated & Revised	809.41(a)(1)(A) -(B)	General eligibility: child's age
809.92(c)	Time limits for education	Redesignated & Revised	809.41(b)	Time limits for education
		Added	809.41(c)	Time limits for associate's degree (high-demand)
		Added	809.41(d)	Time limits for job search
809.93(a)(1)	Income include: gross earnings	Redesignated & Revised	809.44(a)(1)	Income include: gross earnings
809.93(a)(2)-(3)	Income include: net income from self-employment	Redesignated & Revised	809.44(a)(2)	Income include: net income from self-employment
809.93(a)(4), (9), (10)	Income include: Social security, retirement, pensions	Redesignated & Revised	809.44(a)(3)	Income include: pensions, annuities, retirement
809.93(a)(5), (19)	Income include: dividends, interest, sale of property	Redesignated & Revised	809.44(a)(4), (9)	Income include: taxable gains, dividends, interest, sale of property
809.93(a)(6)	Income include: rental income	Redesignated & Revised	809.44(a)(5)	Income include: rental income
809.93(a)(7)	Income include: interest in mortgages, contracts	Removed		
809.93(a)(8)	Income include: public assistance payments	Redesignated & Revised	809.44(a)(6)	Income include: public assistance payments
809.93(a)(11)	Income include: educational loans	Removed		
809.93(a)(12)	Income include: UI	Redesignated	809.44(a)(8)	Income include: UI
809.93(a)(13)	Income include: worker's compensation, disability	Redesignated & Revised	809.44(a)(9)	Income include: worker's compensation, disability
809.93(a)(14)	Income include: spousal maintenance/alimony	Redesignated & Revised	809.44(a)(10)	Income include: spousal maintenance/alimony
809.93(a)(15)	Income include: child support	Redesignated & Revised	809.44(a)(11)	Income include: child support
809.93(a)(16)	Income include: cash support payments	Removed		

809.93(a)(17)	Income include: inheritances	Redesignated & Revised	809.44(a)(7)	Income include: inheritances
809.93(a)(18)	Income include: foster care payments	Redesignated & Revised	809.44(b)(9)	Income exclude: foster care payments
		Added	809.44(a)(12)	Income include: court settlements or judgments
809.93(b)(1)	Income exclude: food stamps	Redesignated	809.44(b)(1)	Income exclude: food stamps
809.93(b)(2)	Income exclude: monthly allowance for certain children of veterans	Redesignated	809.44(b)(2)	Income exclude: monthly allowance for certain children of veterans
809.93(b)(3)	Income exclude: federal educational loans	Redesignated & Revised	809.44(b)(3)	Income exclude: educational loans
		Added	809.44(b)(4)	Income exclude: IDA
		Added	809.44(b)(5)	Income exclude: EITC
		Added	809.44(b)(6)	Income exclude: tax refunds
		Added	809.44(b)(7)	Income exclude: VISTA, AmeriCorps
		Added	809.44(b)(8)	Income exclude: special military pay
809.101(a)(1) -(2)	Transitional: general eligibility	Redesignated & Revised	809.48(a)(1)-(2)	Transitional: general eligibility
		Added	809.48(a)(3)	Transitional: work/training/education reqs.
809.101(b)	Transitional: income limits	Redesignated & Revised	809.48(b)	Transitional: income limits
809.101(c)	Transitional: availability	Redesignated & Revised	809.48(c)	Transitional: availability
809.101(d)	Transitional: unemployed, 4 weeks	Redesignated	809.48(d)	Transitional: unemployed, 4 weeks
809.101(e)	Transitional: denied due to child support	Redesignated	809.48(e)	Transitional: denied due to child support
809.102(a)(1)	Choices: eligibility	Redesignated & Revised	809.45(a)	Choices: eligibility
809.102(a)(2)	Choices: eligibility for sanctioned/conditional	Removed		
809.102(b)	Choices: to Choices participants	Removed		
809.102(c)	Choices: waiting to enter approved component	Redesignated & Revised	809.45(b)	Choices: waiting to enter approved component
809.103	Workforce Orientation Applicant Child Care	Redesignated &	809.46	TANF Applicant Child Care

		Revised		
809.104	FSE&T Child Care	Redesignated & Revised	809.47	FSE&T Child Care
809.105(a)	CPS Child Care: determinations by FPS	Redesignated & Revised	809.49(a)(1)	CPS Child Care: determinations by FPS
		Added	809.49(a)(2)	CPS Child Care: FPS may authorize up to age 19
809.105(b)	CPS closed cases	Redesignated & Revised	809.54(c)	Continuity of care: former CPS children
809.121(a)(1) -(2)	Low Income: eligibility	Redesignated & Revised	809.50(a)	Low Income: eligibility
809.121(a)(3) -(4)	Low Income: eligibility, TANF, Choices	Removed		
809.121(a)(5)	Low Income: reduction in work/training/ed.	Redesignated	809.50(b)	Low Income: reduction in work/training/ed.
809.121(b)	Low Income: education hours	Redesignated	809.50(c)	Low Income: education hours
809.122(a)	Children with disabilities: Definition	Redesignated & Revised	809.2(6)	Definition: Child with Disabilities
809.122(b)(1) -(2)	Children with disabilities: eligibility	Redesignated	809.51(a)	Children with disabilities: eligibility
809.122(b)(3)	Children with disabilities: reduction in hours	Redesignated & Revised	809.51(b)	Children with disabilities: reduction in hours
809.122(c)	Children with disabilities: education hours	Redesignated & Revised	809.51(c)	Children with disabilities: education hours
809.122(d)	Children with disabilities: age to 19	Redesignated & Revised	809.41(a)(1)(B)	Children with disabilities: age to 19
809.123(a)	Teen parent: Definitions	Redesignated & Revised	809.2(20)	Definition: Teen parent
809.123(b)(1)	Teen parent: general eligibility	Redesignated	809.52(a)(1)	Teen parent: general eligibility
809.123(b)(2)	Teen parent: income eligibility	Redesignated & Revised	809.52(a)(d)	Teen parent: income eligibility
809.123(c)	Teen parent: determining income eligibility	Redesignated & Revised	809.52(b)	Teen parent: determining income eligibility
809.124(a)-(b)	Special projects	Redesignated	809.53(a)-(b)	Special projects

809.124(c)	Special projects through match	Removed		
809.124(d)	Special projects' time limits	Redesignated	809.53(c)	
809.201-205	School-Linked Child Care Program	Removed		
809.221(1)(A)	1st priority group: Choices	Redesignated	809.43(a)(1)(A)	1st priority group: Choices
809.221(1)(B)	1st priority group: Transitional	Redesignated	809.43(a)(1)(D)	1st priority group: Transitional
809.221(2)(A)	2nd priority group: WOA	Redesignated & Revised	809.43(a)(1)(B)	1st priority group: TANF Applicant
		Added	809.43(a)(1)(C)	1st priority group: FSE&T
809.221(2)(B)	2nd priority group: CPS	Redesignated	809.43(a)(2)(A)	2nd priority group: CPS
		Added	809.43(a)(2)(B)	2nd priority group: qualified vet
		Added	809.43(a)(2)(C)	2nd priority group: foster youth
809.221(3)(A)	Board priorities, may include teen parents	Redesignated & Revised	809.43(a)(2)(D)	2nd priority group: teen parents
809.221(3)(B)	Board priorities, may include children with disabilities	Redesignated & Revised	809.43(a)(2)(E)	2nd priority group: children with disabilities
809.221(3)(C)	Board priorities, may include others	Redesignated & Revised	809.43(b)	3rd priority group: Board priorities
809.222	Effective utilization of funds (waiting list)	Redesignated & Revised	809.18(a)	Maintenance of a waiting list
809.222	Reason for being placed on waiting list	Removed		
		Added	809.18(b)	Board policy for waiting list
809.223(a)	Eligibility determination prior to authorizing care	Redesignated	809.42(a)	Eligibility determination prior to authorizing care
809.223(b)	Frequency of eligibility determination	Redesignated	809.42(b)	Frequency of eligibility determination
		Added	809.42(c)	Eligibility determination for public certified expenditures
809.224(a)-(d)	Custody and visitation arrangements	Redesignated	809.54(d)-(h)	Custody and visitation arrangements
809.225(a)	Continuity of care: general principle	Redesignated	809.54(a)	Continuity of care: general principle
809.225(b)	Continuity of care: exceptions to make room for Choices, Transitional, WOA	Redesignated & Revised	809.54(b)	Continuity of care: exceptions to make room for 1st priority group
809.225(c)	Continuity of care: six months for former CPS	Redesignated & Revised	809.54(c)(1)	Continuity of care: six months for former CPS
809.225(d)	Continuity of care: for former CPS	Redesignated &	809.54(c)(2)	Continuity of care: for former CPS

		Revised		
809.226	Provider payments in accordance with provider agreement, Agency-Board Agreement	Removed		
809.228	Units of service (full-day /part-day)	Redesignated & Revised	809.93(e)	Reimbursement based on full-day /part-day units
809.229(a)	Enrollment begins on first scheduled day	Removed		
809.229(b)	No payment for holding spaces	Redesignated	809.93(f)	No payment for holding spaces
809.229(c)	Provider attendance reporting: 1st three days of scheduled care	Redesignated & Revised	809.92(b)(3)(C)	Provider attendance reporting: 1st three days of scheduled care
809.229(d)	Payment for occasional part-day/full-day	Redesignated	809.93(g)	Payment for occasional part-day/full-day
809.231(a)	Board establishes reimbursement rates	Redesignated & Revised	809.20(a)	Board establishes reimbursement rates
809.231(b)	Reimburse at lower of max rate or published rate	Redesignated & Revised	809.21	Reimburse at lower of max rate or published rate
809.231(c)	Same maximum rate for providers without agreements	Removed		
809.231(d)-(e)	Graduated rates for TRS/TEEM	Redesignated	809.20(b)-(c)	Graduated rates for TRS/TEEM
809.231(f)	No retroactive payments for new max. rates	Redesignated & Revised	809.93(h)	No retroactive payments for new max. rates
809.231(g)	Reimbursement for care for children with disabilities	Redesignated & Revised	809.20(d)	Reimbursement for care for children with disabilities
809.232	Provider reimbursement for transportation	Redesignated & Revised	809.20(e)-(f)	Provider reimbursement for transportation
809.233	Reduction of reimbursement based on parent share of cost & other subsidies	Redesignated & Revised	809.21(1)-(2)	Reduction of reimbursement based on parent share of cost & other subsidies
809.235	Timely billings submitted to the Commission	Removed		
		Added	809.111(a)	Authority for Boards to establish fraud-prevention procedures
809.251(a)-(b)	Board procedures for fraud prevention	Redesignated & Revised	809.111(b)-(c)	Board procedures for fraud prevention
809.251(c)(1),	Commission review of investigation report	Redesignated &	809.111(d)	Commission review of fact-finding

(3)		Revised		report
809.251(c)(2)	Board referral for prosecution	Removed		
809.251(d)	Submitting final fraud investigation report	Redesignated & Revised	809.111(e)	Submitting final fraud investigation report
809.252	Suspected fraud	Redesignated & Revised	809.112	Suspected fraud
809.253(1)	Actions if fraud is found: termination of provider agreement	Removed		
809.253(2)-(5)	Actions if fraud is found	Redesignated & Revised	809.113	Actions if the Commission finds fraud
809.271	Child care during appeal	Redesignated & Revised	809.75	Child care during appeal
809.272(a)-(e)	Board review of appeal	Redesignated	809.131(a)-(e)	Board review of appeal
		Added	809.131(f)	Board must conduct review prior to submission to Commission
809.273	Appeals to the Commission	Redesignated & Revised	809.132	Appeals to the Commission
809.281(a)	Compliance with rules and policies	Redesignated & Revised	809.114(a)	Compliance with rules and policies
809.281(b)	Failure to comply may warrant corrective actions and breach of contract	Redesignated & Revised	809.114(b)-(c)	Failure to comply may warrant corrective actions and breach of contract
809.282	Provider agreement violations	Removed		
809.283(a)	Corrective actions for a child care contractor	Removed		
809.283(b)	Determining corrective actions	Redesignated & Revised	809.115(a)	Determining corrective actions
809.283(c)	Corrective actions may include	Redesignated & Revised	809.115(b)	Corrective actions may include
809.283(d)	Service Improvement Agreement (SIA)	Redesignated & Revised	809.115(c)	Service Improvement Agreement (SIA)
809.284(a)(1)-(2) and 809.284(b)-(d)	Contractors, providers in non-compliance with federal or state programs	Removed		

809.284(a)(3)	Providers debarred from other federal or state programs	Redesignated & Revised	809.93(d)	No reimbursements for providers debarred from other federal or state programs
809.285	Reapplication of provider agreements	Removed		
809.286	Recovery of overpayments	Redesignated & Revised	809.116	Recovery of improper payments
809.287(a)(1), (4)-(5)	Recovery of overpayments to a provider	Redesignated & Revised	809.117(a)(1)-(6)	Recovery of overpayments to a provider
809.287(a)(2)	Recovery of overpayments when provider did not have an agreement	Removed		
809.287(a)(3)	Recovery of overpayments when provider exceeded licensed capacity	Removed		
809.287(b)	Recovery of overpayments to a parent	Redesignated	809.117(b)	Recovery of overpayments to a parent
809.288	Failure to meet performance standards	Removed		

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 29, 2006, through October 5, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 11, 2006. The public comment period for these projects will close at 5:00 p.m. on November 10, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Helis Oil and Gas Company; Location: The project is located within Block 10 of the northern portion of Sabine Lake. The project can be located on the U.S.G.S. quadrangle map entitled: West of Greens Bayou, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 421120; Northing: 3310730. Project Description: The applicant proposes to drill and install a well (Well No. 1) within State Tract 10 of the northern portion of Sabine Lake. Upon successful completion of the well, a wellhead protection structure measuring 7 feet by 16 feet will be installed. Additionally, a limestone pad 100 feet wide by 250 feet long and 3 feet thick will be placed on the bay bottom. No dredging or wheel washing will be required to allow passage of the drilling vessel. CCC Project No.: 07-0004-F1; Type of Application: U.S.A.C.E. permit application #24337 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Helis Oil and Gas Company; Location: The project is located within Block 10 of the northern portion of Sabine Lake. The project can be located on the U.S.G.S. quadrangle map entitled: West of Greens Bayou, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 421120; Northing: 3310730. Project Description: The applicant proposes to drill and install a well (Well No. 2) within State Tract 10 of the northern portion of Sabine Lake. Upon successful completion of the well, a wellhead protection structure measuring 7-foot by 16-foot will be installed. Additionally, a limestone pad 100-foot wide by 250-foot long and 3-foot thick will be placed on the bay bottom. No dredging or wheel washing will be required to allow passage of the drilling vessel. CCC Project No.: 07-0005-F1; Type of Application: U.S.A.C.E. permit application #24338 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: National Offshore, L.P.; Location: The project is located in Trinity Bay, in State Tract (ST) 74, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters) for Well No.1: Zone 15; Easting: 322128; Northing: 3279396. Approximate UTM Coordinates in NAD 27 (meters) for Well No.1A: Zone 15; Easting: 322217; Northing: 3279318. Approximate UTM Coordinates in NAD 27 (meters) for Well No.2: Zone 15; Easting: 322532; Northing: 3280276. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. This includes installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines for ST 74 Wells 1, 1A, and 2; however, either Well 1 or 1A will be drilled in addition to Well 2. The applicant proposes to install multiple 4 and 6-inch gathering pipelines, totaling not more than 6,104 feet of pipeline, terminating at an existing production platform also located in ST 74. The jetting and/or trenching of the bay bottom for the pipeline installation will displace (discharge) a total of 2,300 cubic yards of material. In addition, 2,667 cubic yards of gravel or crushed concrete will be discharged at each of the well locations for a shell pad. The typical vessels used to access the surface locations and undertake the work draft approximately 6.5 feet. Water depths in the proposed surface locations and along the access route are approximately 8.6 feet at mean low tide (MLT). CCC Project No.: 07-0006-F1; Type of Application: U.S.A.C.E. permit application #24320 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: National Offshore, L.P.; Location: The project is located in Trinity Bay, in State Tracts (ST's) 74, 87, and 88, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters) for ST 88 Well No.1: Zone 15; Easting: 321024; Northing: 3278516. Approximate UTM Coordinates in NAD 27 (meters) for ST 88 Well No.2: Zone 15; Easting: 320325; Northing: 3278904. Approximate UTM Coordinates in NAD 27 (meters) for ST 87 Well No.1: Zone 15; Easting: 321178; Northing: 3277659. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. This includes installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines for ST 88 Well Nos. 1 and 2, and ST 87 Well No.1. The applicant proposes to install multiple 4 and 6-inch gathering pipelines, totaling 9,614 feet of pipeline, terminating at an existing production platform located in ST 74. The jetting and/or trenching of the bay bottom for the pipeline installation will displace (discharge) a total of 5,700 cubic yards of material. In addition, 2,667 cubic yards of gravel or crushed concrete will be discharged at each of the well locations for a shell pad. The typical vessels used to access the surface locations and undertake the work draft approximately 6.5 feet. Water depths in the proposed surface locations and along the access

route are approximately 8.5 feet at mean low tide (MLT). CCC Project No.: 07-0007-F1; Type of Application: U.S.A.C.E. permit application #24321 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: National Offshore, L.P.; Location: The project is located in Trinity Bay, in State Tract (ST) 72, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the previously permitted ST 72 Well No.1: Zone 15; Easting: 320420; Northing: 3280542. Approximate UTM Coordinates in NAD 27 (meters) for ST 72 Well No.2: Zone 15; Easting: 319897; Northing: 3280844. Approximate UTM Coordinates in NAD 27 (meters) for ST 72 Well No.3: Zone 15; Easting: 319259; Northing: 3281162. Approximate UTM Coordinates in NAD 27 (meters) for ST 72 Well No.4: Zone 15; Easting: 320401; Northing: 3280566. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. This includes installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines for ST 72 Well Nos. 2, 3, and 4. The ST 72 Well No.1 was previously authorized by Department of the Army Permit 23851. The applicant proposes to install multiple 4 and 6-inch gathering pipelines, totaling 4,229 feet of pipeline, terminating at a previously permitted well and production platform located in ST 72. The jetting and/or trenching of the bay bottom for the pipeline installation will displace (discharge) a total of 2,600 cubic yards of material. In addition, 2,667 cubic yards of gravel or crushed concrete will be discharged at each of the well locations for a shell pad. The typical vessels used to access the surface locations and undertake the work draft approximately 6.5 feet. Water depths in the proposed surface locations and along the access route are approximately 8.4 feet at mean low tide (MLT). CCC Project No.: 07-0008-F1; Type of Application: U.S.A.C.E. permit application #24322 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200605544
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: October 10, 2006

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Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 175q (RFQ) related to these contract awards was published in the June 9, 2006, *Texas Register* (31 TexReg 4767-4768).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that one (1) additional and final contract was awarded as of October 6, 2006 as follows:

A contract is awarded to Terra Hillman, 2174 E. Michael Square, Lake Charles, LA 70611. Examinations will be assigned in $60,000, $75,000 or $90,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is October 6, 2006 through August 31, 2007.

TRD-200605523
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 9, 2006

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Notice of New Texas Cigarette Tax Stamp

The Comptroller of Public Accounts, administering agency for the collection of the Cigarette Tax and as authorized by Tax Code, §154.043 and §154.053, announces the issuance of a new Cigarette Tax stamp, effective January 1, 2007. Distributors must affix a tax stamp to each package of cigarettes within 96 hours of receiving them in Texas for purposes of making a first sale in Texas to show payment of the tax (Tax Code, §154.041 and §154.042). Cigarette distributors must begin affixing the new stamp to each package of cigarettes once any remaining inventory of unused stamps has been depleted. The comptroller's office will make the new stamps available for purchase by cigarette distributors beginning Tuesday, January 2, 2007.

Inquires should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200605463
Timothy Mashburn
General Counsel
Comptroller of Public Accounts
Filed: October 6, 2006

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Texas Education Agency

Notice of Correction: Request for Applications Concerning the Texas Science, Technology, Engineering, and Math Centers (Texas STEM Centers) - East Texas Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-07-001 concerning the Texas Science, Technology, Engineering, and Math Centers (Texas STEM Centers) - East Texas Grant in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8416).

The TEA is amending the originally-published RFA number of 701-07-001. The correct RFA number for the Science, Technology, Engineering, and Math Centers (Texas STEM Centers) - East Texas Grant is 701-07-100, which is reflective of the RFA number published

in the announcement letter and RFA posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200605561
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: October 11, 2006

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 20, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 20, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: A & M Holding, Inc. dba Texas Wawa Food Mart; DOCKET NUMBER: 2006-0981-PST-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN101788685; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks (USTs); 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide proper release detection; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; PENALTY: $4,978; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Bark Investments, Inc. dba Classic Cleaners; DOCKET NUMBER: 2006-1166-DCL-E; IDENTIFIER: RN104960380; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and Texas Health & Safety Code (THSC), §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $948; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: Bark Investments, Inc. dba The Cleaners; DOCKET NUMBER: 2006-1226-DCL-E; IDENTIFIER: RN104960364; LOCATION: Dyess Air Force Base, Taylor County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $160; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Kwang Sool Shin dba Bell Cleaners; DOCKET NUMBER: 2006-1182-DCL-E; IDENTIFIER: RN100712256; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $967; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2006-0616-AIR-E; IDENTIFIER: RN102528197; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 7278, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of hexane and octene; PENALTY: $2,880; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Breenz Enterprises, Inc. dba Wichita Fuel City; DOCKET NUMBER: 2006-0878-PST-E; IDENTIFIER: RN101532547; LOCATION: Forest Hill, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform the required Stage II triennial testing; PENALTY: $1,700; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Chillicothe; DOCKET NUMBER: 2006-0955-MWD-E; IDENTIFIER: RN102985355; LOCATION: Chillicothe, Hardeman County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0010639001, Effluent Limitations and Monitoring Requirement Number 1, Monitoring and Reporting Requirement Number 1 and Sludge Provisions, and the Code, §26.121(a), by failing to comply with permitted effluent limitations and by failing to submit parameter data on the discharge monitoring report; PENALTY: $7,396; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: Commonwealth Properties, Inc. dba Plaza De Las Americas; DOCKET NUMBER: 2006-0758-AIR-E; IDENTIFIER: RN100705409; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §101.4

and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; PENALTY: $1,888; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Crystal Cleaners of Desoto, Inc.; DOCKET NUMBER: 2006-0948-DCL-E; IDENTIFIER: RN100549096; LOCATION: Desoto, Dallas County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Diva Business Management Group, LLC dba Stephen's Cleaners; DOCKET NUMBER: 2006-1208-DCL-E; IDENTIFIER: RN103987830; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Eddins-Walcher Company dba Eddins Walcher Security Fuel System; DOCKET NUMBER: 2006-1327-PST-E; IDENTIFIER: RN102267846; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: unmanned card retail fuel sales; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Jason Godeaux, (512) 239-2541; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(12) COMPANY: Elite Drycleaners, Inc. dba Liberty Cleaners; DOCKET NUMBER: 2006-1450-DCL-E; IDENTIFIER: RN103970794; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $853; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: E. R. Carpenter, L.P.; DOCKET NUMBER: 2006-0957-AIR-E; IDENTIFIER: RN100210830; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 301, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: City of Evant; DOCKET NUMBER: 2006-0813-PWS-E; IDENTIFIER: RN101396802; LOCATION: Evant, Coryell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(5) and (f)(1)(E)(ii)(I), by failing to cover the top of the hypochlorination solution container completely and by failing to provide secondary containment for all liquid chemical storage tanks; 30 TAC §290.46(e)(4)(A), (f)(2), and (t), and THSC, §341.033(a), by failing to ensure that the facility operation is under the direct supervision of a water works operator who holds a minimum of a Class D license, by failing to provide water system records for review, and by failing to post a legible sign at the Highway 84 number two well that includes the name of the water supply and an emergency telephone number where a responsible official can be reached; 30 TAC §290.41(c)(3)(J), (K), and (O), by failing to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, by failing to seal the wellhead with a gasket or pliable crack-resistant sealing compound, and by failing to provide an intruder-resistant fence or lockable building that protects the well and ground storage tank; and 30 TAC §290.43(c)(1) - (4), by failing to provide a 16-mesh or finer corrosion-resistant screen on the roof vent of the standpipe, by failing to provide a properly sealed roof hatch, by failing to properly seal the overflow pipe, and by failing to provide all ground storage tanks with a liquid level indicator gauge; PENALTY: $1,070; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Firestone Polymers, LLC; DOCKET NUMBER: 2006-0754-IHW-E; IDENTIFIER: RN100224468; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: polymer processing; RULE VIOLATED: 30 TAC §335.2(b), by failing to dispose of hazardous waste at an authorized facility; and 30 TAC §335.10(a)(1) and 40 Code of Federal Regulations §262.20(a), by failing to manifest hazardous waste; PENALTY: $11,480; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Gurnak, Inc. dba Sunmart 435; DOCKET NUMBER: 2006-1013-PST-E; IDENTIFIER: RN102060092; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Hockley County; DOCKET NUMBER: 2006-1112-MSW-E; IDENTIFIER: RN104996392; LOCATION: Levelland, Hockley County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized facility; PENALTY: $720; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(18) COMPANY: Hong Enterprises, LLC dba Comet Cleaners; DOCKET NUMBER: 2006-1157-DCL-E; IDENTIFIER: RN104084777; LOCATION: The Woodlands, Harris County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Site H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Judy's Super Drycleaner, Inc. dba Conroe Super Dry Cleaners; DOCKET NUMBER: 2006-1124-DCL-E; IDENTIFIER: RN104096334; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Site H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: KMCO Port Arthur, Inc. dba KMTEX; DOCKET NUMBER: 2006-1048-AIR-E; IDENTIFIER: RN100640283; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §101.4 and §116.115(c), Air Permit Number 74398, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions and nuisance conditions; and 30 TAC §101.201(a)(1)(A) and (B) and THSC, §382.085(b), by failing to report the May 25, 2006, emissions event as a reportable event; PENALTY: $9,231; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Lanxess Corporation; DOCKET NUMBER: 2006-0602-AIR-E; IDENTIFIER: RN104680871; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 20153, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a) and THSC, §382.085(b), by failing to properly notify the TCEQ of an emissions event; PENALTY: $3,264; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5424 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Brenda A. Mann dba Mann Cleaners; DOCKET NUMBER: 2006-0821-DCL-E; IDENTIFIER: RN104086574; LOCATION: Bedford, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Maple Water Supply Corporation; DOCKET NUMBER: 2006-0832-PWS-E; IDENTIFIER: RN101458156; LOCATION: Maple, Bailey County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling and provide notification of the failure to conduct bacteriological sampling; PENALTY: $2,398; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(24) COMPANY: MK Family Limited Partnership dba Jiffy Mart 5; DOCKET NUMBER: 2006-0628-PST-E; IDENTIFIER: RN101378248; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system and by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(a) and (c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release and by failing to conduct proper release detection for the product piping; 30 TAC §334.48(c), by failing to conduct inventory control procedures for all USTs; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form; and 30 TAC §334.10(b), by failing to have the required UST records maintained, accessible, and available for the inspection upon request; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(25) COMPANY: Nimi's, Inc. dba Ray Stuart's Cleaners; DOCKET NUMBER: 2006-0979-DCL-E; IDENTIFIER: RN103959805; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: dry cleaners; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Orange Crush Recyclers, Ltd.; DOCKET NUMBER: 2006-0977-AIR-E; IDENTIFIER: RN103081394; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 55240L001, Special Condition Number 9(A), and THSC, §382.085(b), by failing to request location or change of location authorization and obtain written approval prior to moving to a new site; PENALTY: $14,592; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Petro Stopping Centers, L.P. dba Petro Stopping Center 50; DOCKET NUMBER: 2006-1229-AIR-E; IDENTIFIER: RN102418142; LOCATION: Vinton, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the seven pounds per square inch absolute maximum Reid vapor pressure requirement; PENALTY: $992; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(28) COMPANY: Alvin Gunkel dba Plaza Cleaners; DOCKET NUMBER: 2006-1467-DCL-E; IDENTIFIER: RN105018824; LOCATION: Hughes Springs, Cass County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(29) COMPANY: City of Poth; DOCKET NUMBER: 2006-1255-PWS-E; IDENTIFIER: RN101390367; LOCATION: Poth, Wilson County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile a plant operations manual; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement; 30 TAC §290.43(c)(8), by failing to maintain the ground storage tank; 30 TAC §290.44(h)(4), by failing to provide documentation that backflow prevention devices had been tested for proper operation; and 30 TAC §290.46(j) and (m)(1), by failing to have a customer service inspection certificate completed prior to providing continuous water service to new construction or on any existing service and by failing to inspect the elevated and ground storage tanks annually; PENALTY: $1,638; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: Jennifer Nguyen dba Railyard Cleaners; DOCKET NUMBER: 2006-0991-DCL-E; IDENTIFIER: RN103993713; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(31) COMPANY: Young Chol Kim dba Regency Cleaners; DOCKET NUMBER: 2006-0978-DCL-E; IDENTIFIER: RN100648856; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: dry cleaners; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Song Choe Bracamonte dba Song's Cleaners; DOCKET NUMBER: 2006-1478-DCL-E; IDENTIFIER: RN103979019; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $711; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: South Texas Electric Cooperative, Inc.; DOCKET NUMBER: 2006-1495-AIR-E; IDENTIFIER: RN100222652; LOCATION: Nursery, Victoria County, Texas; TYPE OF FACILITY: electrical power station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a permit compliance certification; and 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $5,760; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3423; REGIONAL OFFICE: 6300 Ocean Drive, Suite1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(34) COMPANY: Ha Kim Hoang Huy Le dba Star Dry Cleaning; DOCKET NUMBER: 2006-1224-DCL-E; IDENTIFIER: RN103996419; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $162; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Hung Nguyen dba Super K Food Store; DOCKET NUMBER: 2006-1121-PST-E; IDENTIFIER: RN101447514; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §334.50(d)(4)(A)(ii)(II) and the Code, §26.3475(c)(1), by failing to perform an automatic test for substance loss; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Texas Lucky 7 Beer & Wine, Inc.; DOCKET NUMBER: 2006-0898-PST-E; IDENTIFIER: RN102344892; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the required annual testing; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; PENALTY: $3,080; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: The Choy Corporation dba Your Valet Cleaners; DOCKET NUMBER: 2006-1332-DCL-E; IDENTIFIER: RN104086020; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $948; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: TRI State Electric, Ltd.; DOCKET NUMBER: 2006-1260-AIR-E; IDENTIFIER: RN100818558; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with seven pounds per square inch absolute maximum Reid vapor pressure requirement; PENALTY: $960; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3939; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(39) COMPANY: Webera, Inc. dba Max Dry Clean Super Store; DOCKET NUMBER: 2006-0997-DCL-E; IDENTIFIER: RN104992847; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $948; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: Zucker Enterprises, Inc. dba Sparkle Cleaners; DOCKET NUMBER: 2006-0823-DCL-E; IDENTIFIER: RN104957873 and RN104962618; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms; PENALTY: $1,422; ENFORCEMENT COORDINATOR: Shontay Wilcher (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200605545
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 10, 2006

♦ ♦ ♦

Notice of District Petition

Notices mailed October 6, 2006

TCEQ Internal Control No. 09052006-D02; Pulte Homes of Texas, L.P. and West Lake Houston 470, Ltd. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 450 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land, consisting of three tracts, to be included in the proposed District; (2) there is one lien holder on the property to be included in the proposed District, and the lien holder is one of the Petitioners to the creation of the proposed District; (3) the proposed District will contain approximately 337.26 acres located in Harris County, Texas; and (4) the proposed District is partially within the extraterritorial jurisdiction and partially within the corporate boundaries of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or ex-

traterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2006-636, effective July 5, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $20,700,000.

TCEQ Internal Control No. 07172006-D03; BGM Land Investments, Ltd. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 463 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Redstone Bank, N.A., on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 249.7 acres of land located in Harris County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village of the State of Texas. By Ordinance No. 2006-194, effective March 1, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $40,000,000.

TCEQ Internal Control No. 06162006-D05; Houston Intercontinental Trade Center, L.P. and D. R. Horton-Texas, Ltd., (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 112 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of and holds title to all of the lands to be included in the proposed District; (2) there is one lien holder, Partners Bank of Texas, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 387.6 acres of land located in Montgomery County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Conroe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village of the State of Texas. By Resolution No. 2840-06, effective February 23, 2006, the City of Conroe, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $32,200,000.

TCEQ Internal Control No. 06222006-D02; Boa Sorte Limited Partnership, Rio Claro, Inc., JTLD Investments, LLLP, and Mt. Baldy Limited Partnership (Petitioner) filed a petition for creation of South Denton County Water Control and Improvement District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the majority owner of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 231.59 acres located within Denton County, Texas; and (4) the proposed District is within the corporate limits or extraterritorial jurisdiction of City of Fort Worth, Texas. By Resolution No. 3157-01-2005, effective January 4, 2005, the City of Fort Worth, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $23,850,000.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200605558
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 11, 2006

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to

bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 20, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 20, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bob Perry dba Amistad American Camp Ground; DOCKET NUMBER: 2005-1827-PWS-E; TCEQ ID NUMBER: RN102676715; LOCATION: Highway 90 West, Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine bacteriological samples at a frequency based on the population served by the facility; and 30 TAC §290.122(c)(2)(B), and THSC, §341.033(d), by failing to notify persons, served by the facility, of the failure to collect routine bacteriological samples by direct delivery or by continuously posting the notice in conspicuous places within the area served by the facility; PENALTY: $1,980; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(2) COMPANY: Ray Long dba Ray Long Washout and Truck Service; DOCKET NUMBER: 2005-1917-IWD-E; TCEQ ID NUMBER: RN104712609; LOCATION: 1110 North Highway 287, Sunset, Montague County, Texas; TYPE OF FACILITY: tractor trailer washout; RULES VIOLATED: Texas Water Code (TWC), §26.121(a), by failing to prevent an unauthorized discharge of wastewater; PENALTY: $7,500; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Rogelio De La Paz dba De La Paz Trucking; DOCKET NUMBER: 2006-0083-MSW-E; TCEQ ID NUMBER: RN104812599; LOCATION: 248 East County Road, Kingsville, Kleberg County, Texas; TYPE OF FACILITY: transport company; RULES VIOLATED: 30 TAC §330.7(a), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: $1,000; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Shanil-Tex, Inc. dba Alex's Mobil; DOCKET NUMBER: 2006-0370-PST-E; TCEQ ID NUMBER: RN102493814; LOCATION: 7320 North Stemmons Freeway, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.22(a), and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Assurance Account No. 0059097U for Fiscal Year 2006; Default Order, Docket No. 2003-0856-PST-E, Ordering Provision No. 1, by failing to pay the penalty associated with Default Order, Docket No. 2003-0856-PST-E, which was effective January 30, 2005; PENALTY: $5,360; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Susan Montgomery; DOCKET NUMBER: 2006-0312-PST-E; TCEQ ID NUMBER: RN102248838; LOCATION: 409 North 13th Street, Abilene, Taylor County, Texas; TYPE OF FACILITY: property with active USTs; RULES VIOLATED: 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system which contained regulated substances; 30 TAC §334.49(c)(2)(C), and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1)(A), and TWC, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment; 30 TAC §334.10(b), by failing to make available legible copies of all required UST records for inspection upon request by agency personnel; 30 TAC §334.7(d)(3), by failing to amend, update, or change information on the UST registration; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number was permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube of the UST according to the UST registration and self-certification form; and 30 TAC §334.51(b)(2)(B)(ii), and TWC, §26.3475(c)(2), by failing to equip the spill containment device with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container; PENALTY: $13,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200605550
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 10, 2006

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 20, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 20, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Abdul Kanzani dba Super Maks Grocery; DOCKET NUMBER: 2004-0452-PST-E; TCEQ ID NUMBER: RN101742963; LOCATION: 3370 Concord Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for Stage II Vapor Recovery System and any related components installed at the facility; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the underground storage tank (UST) system with an identification number listed on the UST registration and self-certification form; 30 TAC §334.10(b), by failing to have UST operational records available for inspection or to provide the records upon request by authorized agency personnel; 30 TAC §334.50(b)(1)(A) and Texas Water Code (TWC), §26.3475(c)(1), by failing to monitor for releases at a frequency of at least once every month not to exceed 35 days between each monitoring; and 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile the inventory control records on a monthly basis which were sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons; PENALTY: $11,700; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Charlie Brown dba Charlie Brown's Learning Center; DOCKET NUMBER: 2004-1307-PWS-E; TCEQ ID NUMBERS: 1520154 and RN102678430; LOCATION: 8100 East County Road 6100, Idalou, Lubbock County, Texas; TYPE OF FACILITY: day care center that has approximately three drinking water service connections; RULES VIOLATED: 30 TAC §290.109(c)(2)(A), and THSC, §341.033(d), by failing to take the required monthly bacteriological samples at the facility; PENALTY: $2,400; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(3) COMPANY: Concho Rural Water Corporation; DOCKET NUMBER: 2006-0041-PWS-E; TCEQ ID NUMBER: RN101215853; LOCATION: intersection of United States Highway 277, 3.2 miles south of the intersection of Reece Road and Highway 277, and Farm-to-Market Road 2335 and one half mile south of Christoval off United States Highway 277, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(h), by failing to obtain approval of plans and specifications before starting construction; PENALTY: $204; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: D & M Excavating, Inc.; DOCKET NUMBER: 2004-1111-WQ-E; TCEQ ID NUMBERS: TXR05R984 and RN104319884; LOCATION: 1899 Highway 718, Aurora, Wise County, Texas; TYPE OF FACILITY: stone quarry; RULES VIOLATED: 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to waters in the state through an individual permit or the Multi-Sector General Permit; PENALTY: $6,000; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: E.I. Du Pont De Nemours and Company dba Du Pont Sabine River Works; DOCKET NUMBER: 2004-1135-MLM-E; TCEQ ID NUMBER: RN100542711; LOCATION: 3055 Farm-to-Market Road 1006, Orange, Orange County, Texas; TYPE OF FACILITY: chemical manufacturing plant with a public water system; RULES VIOLATED: 30 TAC §116.115(b)(2)(F); TCEQ Air Permit Nos. 9176 and 20204, Maximum Allowable Emission Rate Table (MAERT); and THSC, §382.085(b), by failing to comply with an emissions limitation by allowing 11 unauthorized emissions events; 30 TAC §116.115(b)(2)(F); TCEQ Air Permit No. 914, MAERT; and THSC, §382.085(b), by failing to comply with an emissions limitation on June 25, 2003 from 12:28 to 12:37 hours when a plant wide incident caused an electrical upset resulting in equipment shutdowns which caused several reportable emissions events including the release of 49,050 pounds of propylene from the Propylene Feed Header, Emissions Point Number (EPN) DA01401; 30 TAC §101.201(a)(1), (a)(1)(B) and (b)(4), and THSC, §382.085(b), by failing to properly notify the TCEQ regional office of reportable emissions events; 30 TAC §101.201(a)(1) and (a)(1)(B), and THSC, §382.085(b), by failing to notify the TCEQ regional office of two reportable emissions events within 24 hours; 30 TAC §116.115(b)(2)(F) and (c); TCEQ Air Permit No. 1790, Special Condition No. 1, MAERT; and THSC, §382.085(b), by failing to maintain an emission rate below the MAERT limits; 30 TAC §117.207(a), and THSC, §382.085(b), by failing to maintain an emission rate below the allowable plant wide nitrogen oxides limit; 30 TAC §§101.20(1) and (2), 111.111(a)(4)(A), and 115.115(b)(2)(F); TCEQ Air Permit No. 914, Special Conditions Nos. 1, 2 and 4; and THSC, §382.085(b), by failing to maintain an emissions rate below the allowable emission limit; 30 TAC §§101.20(1) and (2), 111.111(a)(4)(A), 113.110, and 116.115(c); TCEQ Air Permit No. 1302, Special Condition No. 2; 40 CFR §60.112b(a)(3)(ii) and §61.349(a)(2)(ii); and THSC, §382.085(b),

by failing to properly operate a flare; 30 TAC §116.115(b)(2)(F), and THSC, §382.085(b), by failing to comply with an emissions limitation; 30 TAC §116.115(b)(2)(F) and (c), and §111.111(a)(4)(A); TCEQ Air Permit Nos. 1302, 1790, and 9629, General Condition MAERT; and THSC, §382.085(b), by failing to maintain emission rate below the permitted limit; 30 TAC §101.201(a)(1)(B), (a)(2)(H), (b)(4), and (b)(7), and THSC, §382.085(b), by failing to include all required information on the final report of an emissions event; 30 TAC §101.201(a)(2)(H), (b)(4), and (b)(7), and THSC, §382.085(b), by failing to include all required information on the final reports of emissions events; 30 TAC §290.113(f)(5), and THSC, §341.0315(c), by exceeding the Maximum Contaminant Level of 0.060 milligrams per liter based on a running annual average for haloacetic acids during the First Quarter of 2004; 30 TAC §116.115(b)(2)(F) and (c), and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; 30 TAC §116.115(b)(2)(F); TCEQ Air Permit No. 9176, Emission Standard No. 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B), and THSC, §382.085(b), by failing to properly notify the TCEQ regional office of a reportable emissions event with 24 hours; 30 TAC §101.201(b)(7) and (b)(8), and THSC, §382.085(b), by failing to comply with the final record requirements for an emissions event; 30 TAC §116.115(b)(2) and (b)(2)(F); TCEQ Air Permit No. 1302, General Condition No. 8, and THSC, §382.085(b), by failing to maintain an emission rate limit; 30 TAC §116.115(b)(2)(F); TCEQ Permit No. 20204, Special Condition 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(2)(H) and (b)(4), and THSC, §382.085(b), by failing to properly identify the authorized emissions limits for the compounds released during an emissions event occurring November 28 - 30, 2003; 30 TAC §116.115(b); TCEQ Air Permit No. 1302, General Condition B MAERT; and THSC, §382.085(b), by failing to properly report an emissions event that began on November 28, 2003; THSC, §382.085(b), by failing to prevent the release of unauthorized emissions at the D-Unit; 30 TAC §§101.20(2), 111.111(a)(4)(A), and 116.115(b)(2)(F) and (c); TCEQ Air Permit No. 914 Special Conditions Nos. 1, 2, and 4; 40 CFR §61.349(a)(2)(iii); and THSC, §382.085(b), by failing to maintain an emissions rate below the authorized emission rate for an emissions event that occurred on October 20, 2003; 30 TAC §115.352(2) and §116.115(c); TCEQ Air Permit No. 914 Special Condition No. 15.I; and THSC, §382.085(b), by failing to repair 72 components (valves) in volatile organic compound service during the April 23 - May 27, 2003 shutdown; 30 TAC §113.110, and THSC, §382.085(b), by failing to use an approved Environmental Protection Agency method to determine the concentration of substances in the cooling water of the Adiponitrile unit; 30 TAC §305.125(1); TCEQ Water Quality Permit No. 00475, Texas Pollutant Discharge Elimination System Permit No. 00475, Effluent Limitations and Monitoring Requirement No. 1; and National Pollutant Discharge Elimination System (NPDES) Permit No. TX0006327, by failing to comply with effluent limits for outfalls 101A and 201A; and TWC, §26.121(a), and NPDES Permit No. TX0006327, Effluent Limitations and Monitoring Requirements, by failing to comply with the permit limit for pH range excursions for more than 60 minutes at outfall 001; PENALTY: $176,575; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2006-0340-AIR-E; TCEQ ID NUMBER: RN103773206; LOCATION: 5761 Underwood Road, Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a January 7, 2005 emissions event; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 7.E., and THSC, §382.085(b), by failing to equip each openended line with a cap, blind flange, plug, or a second valve; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an April 15, 2004 emissions event; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a March 21, 2004 emissions event; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a January 31, 2003 emissions event; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a March 7, 2003 emissions event; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a February 9, 2003 emissions event; 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a May 29, 2004 emissions event; and 30 TAC §116.115(c), Air Permit No. 4157A, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an October 5, 2005 emissions event; PENALTY: $64,100; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Esperanza Carrasco dba El Pabellon; DOCKET NUMBER: 2004-0402-PST-E; TCEQ ID NUMBER: RN102429362; LOCATION: at Highway 67 and Harrington, Presidio, Presidio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A), and TWC, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the USTs which contain regulated substances; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the USTs with an identification number listed on the UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i), by failing to make available a valid, current TCEQ Fuel Delivery Certificate to a common carrier prior to receiving fuel deliveries from April 1 - October 22, 2003; and 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile the inventory control records on a monthly basis which are sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: $56,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: F.K.R. Enterprises, Inc. dba Yellow Jacket Grocery; DOCKET NUMBER: 2004-0255-PST-E; TCEQ ID NUMBER: RN101443950; LOCATION: 3202 Farm-to-Market Road 2403, Alvin, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail gasoline sales; RULES VIOLATED: 30 TAC §334.48(c), and §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to conduct effective manual or automatic inventory control procedures for the UST systems and by failing to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.72(3)(A), by failing to report to the agency within 24 hours after monitoring results indicated that a release may have occurred; 30 TAC §334.74(1)(A), by failing to immediately investigate and confirm all suspected releases of regulated substances within 30 days of a suspected release; and 30 TAC §334.50(b)(2)(A)(i), and TWC, §26.3475, by failing to equip each separate pressurized line with an

automatic line leak detector capable of detecting any release from the piping system of three gallons per hour when the piping pressure is at ten pounds per square inch; PENALTY: $7,000; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Prince A, Inc.; DOCKET NUMBER: 2005-1476-PST-E; TCEQ ID NUMBER: RN101550713; LOCATION: 6551 Grapevine Highway, North Richland Hills, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor all tanks, in a manner which would detect a release, at a frequency of at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in 30 TAC §334.50(d)(4) - (d)(10); 30 TAC §334.50(b)(2), by failing to monitor piping in the UST system in a manner which would detect a release from any portion of the piping system; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detector at least once per year for performance and operational reliability, and by failing to properly calibrate and maintain the line leak detector in accordance with the manufacturer(s specifications and recommended procedures; 30 TAC §334.50(d)(1)(B)(ii), by failing to reconcile detailed inventory control records at least once a month in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(a), by failing to ensure that all piping in its UST system that routinely conveyed regulated substances under pressure complied with TCEQ requirements for pressurized piping release detection equipment; TWC, §26.3475(c)(1), by maintaining a tank in a UST system that did not comply with TCEQ requirements for tank release detection equipment; 30 TAC §115.246(1), by failing to maintain a copy of the CARB Executive Order(s) or third-party certification(s) for the Stage II vapor recovery system and any related components installed at the facility; 30 TAC §115.245(2), by failing to perform verification of proper operation of the Stage II equipment in accordance with the test procedures referenced in 30 TAC §115.245(1) at least every 12 months; and THSC, §382.085(b), by causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity in violation of THSC, Chapter 382 or of any TCEQ rule or order; PENALTY: $5,400; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Rafael Ramon dba Lil Bitty Trucking; DOCKET NUMBER: 2006-0342-MSW-E; TCEQ ID NUMBER: RN104745609; LOCATION: 830 South Getty Street, Uvalde, Uvalde County, Texas; TYPE OF FACILITY: trucking company; RULES VIOLATED: 30 TAC §327.5(a), and TWC, §26.121(a), by failing to prevent the discharge of diesel fuel into or adjacent to any waters in the state and to immediately abate, contain, and clean up the discharge; 30 TAC §327.3(b), and TWC, §26.039(b), by failing to provide notification to TCEQ of a reportable discharge or spill within 24 hours after the occurrence; PENALTY: $3,750; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Redford Water Supply; DOCKET NUMBER: 2005-1074-PWS-E; TCEQ ID NUMBER: RN101266054; LOCATION: State Highway 170, 16 miles east of Presidio, Presidio County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis for the months of February, March, and July 2003, December 2004, and January 2005; and 30 TAC §290.122(c)(2)(A), and THSC, §341.033(d), by failing to post notice of its failure to collect and submit monthly water samples for bacteriological analysis for the same months; PENALTY: $1,600; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(12) COMPANY: Safeway Inc. dba Randalls Store; DOCKET NUMBER: 2006-0171-PST-E; TCEQ ID NUMBER: RN104275201; LOCATION: 2001 Gattis School Road, Round Rock, Williamson County, Texas; TYPE OF FACILITY: supermarket chain store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; PENALTY: $2,500; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2006-0108-AIR-E; TCEQ ID NUMBER: RN100870898; LOCATION: 2000 Goodyear Drive, Houston, Harris County, Texas; TYPE OF FACILITY: synthetic rubber plant; RULES VIOLATED: 30 TAC §116.715(a), New Source Review Flexible Permit No. 6618, Special Condition 1, and THSC, §382.085(b), by failing to maintain emissions below permitted limit; PENALTY: $4,075; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Thomas Marcantel; DOCKET NUMBER: 2006-0554-SLG-E; TCEQ ID NUMBER: RN103000170; LOCATION: seven miles north of Normangee on Farm-to-Market Road 39, Leon County, Texas; TYPE OF FACILITY: registered sewage sludge transporter business and owns property; RULES VIOLATED: 30 TAC §312.143 and §330.15(c), by failing to transport and deposit all sludge at a designated facility that has authorization to receive waste; PENALTY: $2,500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: TXG Properties of Texas, LLC; DOCKET NUMBER: 2001-0185-PST-E; TCEQ ID NUMBERS: 8427, 8520, 8527, 8528, and 8516 and RN102263811; LOCATIONS: 911 College, Levelland, Hockley County (facility number 8427), 7909 19th Street (facility number 8520), 114 North University (facility number 8527), 7301 Brownfield Highway (facility 8528), and Farm-to-Market Road 1585 and Tahoka Highway (currently listed as 906 Farm-to-Market Road 1585) (facility number 8516), Lubbock, Lubbock County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §§334.54(c), 334.49(a)(2), 334.50(b)(1)(A), and TWC, §26.3475, by failing to meet the requirements for protecting and monitoring the temporarily out-of-service UST systems located at the facilities; 30 TAC §334.7(d)(3), by failing to amend the registration and reflect the current status of the tank systems located at the facilities; and 30 TAC §334.21 and §334.22, and TWC, §5.702, by failing to pay UST fees and associated penalties and interest for each of the facilities; PENALTY: $16,500; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(16) COMPANY: Western Waste of Texas, L.L.C. dba New Boston Landfill; DOCKET NUMBER: 2002-0075-MSW-E; TCEQ ID NUMBER: RN102594892; LOCATION: 1030 State Highway 82 West, New

Boston, Bowie County, Texas; TYPE OF FACILITY: municipal landfill; RULES VIOLATED: 30 TAC §330.111, by failing to perform inspections of the perimeter fence, landfill markers, access road, intermediate cover, and drainage and erosion as required by Permit No. 576-A, Section 4.24 of the Site Operating Plan, and by failing to measure and record leachate levels weekly in the Site Operating Record as required by Section 5.1 of its Leachate and Contaminated Water Plan; 30 TAC §330.122, by failing to maintain the landfill markers in a condition so as to be visible during operating hours; 30 TAC §330.133(a), by failing to apply six inches of daily cover to the working face of the facility; 30 TAC §330.133(f), by failing to repair erosion of the intermediate cover at the facility; THSC, §361.013(d), and 30 TAC §330.133(g), by failing to accurately record the amount of soil applied to the working face of the facility in the daily cover log; 30 TAC §330.136(b)(3), and 40 CFR §61.154(e)(1)(ii), by failing to list the transporter(s address on two manifests for the shipment of asbestos; THSC, §361.013(d), and 30 TAC §330.138, by failing to maintain load inspection logs to document that random inspections of incoming loads were being performed weekly; and Permit No. 576, Provision III.7.a, by causing, suffering, allowing, or permitting the unauthorized disposal of approximately 135,000 cubic yards of waste outside of the contours of the landfill; PENALTY: $81,625; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200605549
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 10, 2006

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Notice of Water Quality Applications

The following notices were issued on October 5, 2006.

The following require the applicants to publish notice in the newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

The United States Department of the Navy and Vought Aircraft Industries, Inc. has applied for a renewal of TPDES Permit No. WQ0004519000, which authorizes the discharge of storm water, air conditioning condensate, once-through cooling water, fire main flushing, foundation drainage, and groundwater infiltration on a intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 9314 West Jefferson Boulevard, on the southeast corner of West Jefferson Boulevard and Southeast 14th Street, northwest of Mountain Creek Lake in the City of Dallas, Dallas County, Texas.

LaBarge Pipe & Steel Company, a manufacturing facility, has applied to the TCEQ for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014700001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 400 South Sheldon Road, approximately 3100 feet south of Interstate Highway 10, near the southwest side of Cactus property in Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

City of Frost has applied for a renewal of TPDES Permit No. 10444-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 0.4 mile northwest of the intersection of State Highway 22 and Farm-to-Market Road 667 in Navarro County, Texas.

City of Alvarado has applied for a renewal of TPDES Permit No. WQ0010567001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1,000 feet south of the intersection of Interstate Highway 35W and Farm-to-Market Road 3136 adjacent to the North Fork of Chambers Creek in Johnson County, Texas.

City of Alvarado has applied for a renewal of TPDES Permit No. WQ0010567002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 700 feet west of Interstate Highway 35 West of County Road 404 in Johnson County, Texas.

Presbyterian Children's Homes and Services has applied for a renewal of TPDES Permit No. 11276-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8000 gallons per day. The facility is located southeast of the Children's Home, on the southeast side of Farm-to-Market Road 66 approximately 4 miles east of the intersection of Interstate Highway 35 and Farm-to-Market Road 66 in Hill County, Texas.

Chemcentral Southwest, L.P., which operates the Chemcentral Southwest - Dallas, a storage and wholesale chemical products distribution facility, has applied for a major amendment to TPDES Permit No. WQ0004687000, to authorize the discharge of uncontaminated storm water on an intermittent and flow variable basis via new Outfall 002. The current permit authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001. The facility is located at 3636 Dan Morton Drive in the City of Dallas, Dallas County, Texas.

David Lee Sheffield, P.O. Box 2110, Onalaska, Texas 77360, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13147-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 1.2 miles north of the intersection of Farm-to-Market Road 350 and Farm-to-Market Road 3126, approximately 5 miles west of the City of Livingston and on the east shoreline of Lake Livingston in Polk County, Texas.

Fountain Lake Owners Water Supply Corporation, 242 Fountain Lake West, Livingston, Texas 77351, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13151-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day. The facility is located approximately 1,700 feet northwest of U.S. Highway 190 and Farm-to-Market Road 3125 in Polk County, Texas.

Cross Roads Independent School District, 14434 Farm-to-Market Road 59, Malakoff, Texas 75148-7947, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13789-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located approximately 940 feet northeast of the intersection of Farm-to-Market Road 3441 and Farm-to-Market Road 59 in Henderson County, Texas.

Monarch Utilities I L.P. has applied for a renewal of TPDES Permit No. WQ0014179001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located east and adjacent to U.S. Highway 190 in the

Blue Water Cove Subdivision and approximately 6,500 feet northeast of the intersection of U.S. Highway 190 and State Highway 980 in San Jacinto County, Texas.

Young Men's Christian Association of the Greater Houston Area has applied for a renewal of TPDES Permit No. 11644-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1000 feet north of Farm-to-Market Road 356, 4.5 miles east of State Highway 19 and 5.0 miles southeast of the intersection of State Highway 19 and Farm-to-Market Road 230 in Trinity County, Texas.

L.O.B. Limited Partnership, 2200 West San Houston Parkway South, Suite 1525, Houston, Texas 77042-3623, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014514001 to authorize a change in the location of the outfall. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,360,000 gallons per day. The facility is located approximately 3,300 feet southwest of the intersection of Canal Road and Bellaire Boulevard and approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 1093 and Canal Road in Fort Bend County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

San Antonio River Authority, P.O. Box 839980, San Antonio, Texas 78283, has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize an interim phase for the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located 1,900 feet southeast of the intersection of U.S. Highway 181 South and Richter Road in Bexar County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200605557
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 11, 2006

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Notice of Water Rights Application

Notice issued October 10, 2006

APPLICATION NO. 12054; San Antonio River Authority, P.O. Box 839980, San Antonio, Texas 78283-9980, Applicant, has applied for a Water Use Permit to construct and maintain a lock and dam system on the San Antonio River, San Antonio River Basin for non-consumptive, in-place navigation and recreational purposes in Bexar County. The application was received on June 27, 2006 and additional information was received on August 28, 2006. The application was accepted for filing and declared administratively complete on September 27, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200605556
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 11, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
El Paso	Border Medical Specialists PA DBA Cancer Treatment Institute	L05973	El Paso	00	09/22/06
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L06028	Lubbock	00	09/14/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Diagnostic Clinic PLLC	L05101	Abilene	12	09/19/06
Amarillo	Coffee Memorial Blood Center	L04705	Amarillo	05	09/26/06
Austin	Texas Oncology PA DBA Positron Imaging of Austin	L05696	Austin	05	09/22/06
Austin	Texas Oncology PA DBA Positron Imaging of Austin	L05696	Austin	04	09/20/06
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	63	09/21/06
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	73	09/25/06
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	66	09/21/06
Austin	St Davids Healthcare Partnership LP LLP DBA St Davids Medical Center	L05856	Austin	06	09/26/06
Austin	St Davids Healthcare Partnership LP LLP DBA St Davids Medical Center	L00740	Austin	94	09/25/06
Beaumont	Timothy K Colgan MD PA	L05706	Beaumont	09	09/25/06
Brownwood	Brownwood Specialty Group DBA BSG Imaging	L05878	Brownwood	02	09/25/06
Carrollton	Tenet Health System Hospitals Dallas Inc DBA Trinity Medical Center	L03765	Carrollton	52	09/25/06
Channelview	Xxtreme Pipe Services LLC	L02576	Channelview	23	09/26/06
Corpus Christi	EOG Resources Inc	L05818	Corpus Christi	01	09/26/06
Dallas	Mallinckrodt Inc	L03580	Dallas	52	09/20/06
Dallas	Texas Instruments Incorporated	L05048	Dallas	09	09/18/06
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	163	09/21/06
Dallas	Heart Consultants of North Texas	L05898	Dallas	02	09/18/06
Dallas	Texas Radiation Physics Associates Inc	L04152	Dallas	10	09/26/06
Denton	TTHR Limited Partnership DBA Presbyterian Hospital of Denton	L04003	Denton	40	09/18/06
Denton	Columbia Medical Center of Denton Subsidiary LP DBA Denton Regional Medical Center	L02764	Denton	61	09/20/06
El Paso	Nuclear Diagnostics LLC	L05695	El Paso	03	09/22/06
El Paso	Cardinal Health 200 Inc Medical Products and Services Convertors Division	L02407	El Paso	30	09/22/06

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Electra	Electra Memorial Hospital	L03227	Electra	13	09/25/06
Euless	Cor Specialty Associates of North Texas	L05062	Euless	20	09/25/06
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	14	09/20/06
Fort Worth	Health Texas Provider Network DBA Baylor Specialty Associates of Ft Worth	L06000	Fort Worth	01	09/19/06
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	15	09/15/06
Fort Worth	Precision Energy Services Inc	L00747	Fort Worth	75	09/27/06
Fort Worth	Health Texas Provider Network DBA Baylor Specialty Associates of Ft Worth	L06000	Fort Worth	02	09/29/06
Gilmer	East Texas Medical Center Gilmer	L05959	Gilmer	01	09/21/06
Grapevine	Grapevine Imaging & Pain Management LLC	L05922	Grapevine	03	09/20/06
Gun Barrel City	Heartmasters PA	L05760	Gun Barrel City	02	09/18/06
Houston	DETEQ Services	L05778	Houston	04	09/26/06
Houston	Interventional Cardiology Associates	L05294	Houston	08	09/15/06
Houston	Houston Cardiovascular Associates	L05070	Houston	12	09/02/06
Houston	University of Houston Environmental Health and Risk Management	L01886	Houston	55	09/15/06
Houston	Cardiology Clinic PA	L05710	Houston	05	09/22/06
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	104	09/21/06
Houston	New Medical Horizons II LTD DBA Cypress Fairbanks Medical Center	L03424	Houston	29	09/15/06
Houston	Northwest Houston Cardiology PA	L05823	Houston	01	09/21/06
Houston	Gulf Coast Regional Blood Center	L04755	Houston	07	09/22/06
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	32	09/22/06
Houston	Veterinary Cancer Associates DBA Gulf Coast Vet Oncology DBA Gulf Coast Vet Diagnostic Imaging	L04803	Houston	12	09/25/06
Houston	Interventional Cardiology Associates	L05294	Houston	09	09/27/06
Houston	Medi Physics Inc DBA GE Healthcare	L05517	Houston	12	09/28/06
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	26	09/26/06
Houston	Institute of Biosciences and Technology	L04681	Houston	25	09/26/06
Houston	Doctors Hospital LP DBA Doctors Hospital Tidwell	L02047	Houston	28	09/26/06
Houston	Domingo G Gonzalez Jr MD PA DBA Houston Metropolitan Cardiology Associates	L05283	Houston	07	09/25/06
Houston	Gulf Coast Cancer Center Inc DBA Gulf Coast Cancer and Diagnostic Center at Southeast	L05194	Houston	08	09/25/06
Houston	Cardinal Health	L05536	Houston	19	09/20/06
Houston	Cardiology of Houston	L05285	Houston	05	09/27/06
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	14	09/25/06
La Porte	Sunoco Inc R&M DBA Sunoco Chemicals	L02153	La Porte	31	09/19/06
Lewisville	Columbia Medical Center of Lewisville Subsidiary LP DBA Medical Center of Lewisville	L02739	Lewisville	50	09/21/06
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	09	09/20/06
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	05	09/14/06
Longview	Good Shepherd Medical Center	L02411	Longview	76	09/22/06
Lubbock	University Medical Center	L04719	Lubbock	86	09/21/06

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mesquite	National Surgicare JV1 LTD DBA Health South Surgery Center	L05654	Mesquite	02	09/22/06
Mesquite	Baylor Medical Center – Mesquite DBA Baylor Diagnostic Imaging Center	L04914	Mesquite	19	09/25/06
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	45	09/26/06
Muenster	Muenster Hospital District DBA Muenster Memorial Hospital	L04887	Muenster	09	09/25/06
Nocona	Nocona Hospital District DBA Nocona General Hospital	L04977	Nocona	09	09/25/06
Odessa	Golder CAT Scan and MRI Center	L04770	Odessa	07	09/26/06
Orange	Solvay Solexis Inc	L03968	Orange	18	09/26/06
Paris	Advanced Heart Care PA	L05290	Paris	18	09/22/06
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	37	09/21/06
Port Arthur	The Medical Center of Southeast Texas LP	L01707	Port Arthur	62	09/14/06
Richardson	Optex Systems Inc	L04332	Richardson	09	09/22/06
Richardson	Richardson Hospital Authority DBA Richardson Regional Medical Center	L02336	Richardson	45	09/22/06
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	42	09/25/06
Rowlett	Rowlett Cardiology Associates PA DBA Texas Cardiac Associates	L05450	Rowlett	06	09/14/06
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	54	09/20/06
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	149	09/20/06
San Antonio	Alamo Cement Company LTD	L04951	San Antonio	08	09/18/06
San Antonio	Medical and Radiation Physics Inc	L01417	San Antonio	23	09/22/06
San Antonio	Heart and Vascular Institute of Texas	L04799	San Antonio	16	09/28/06
San Antonio	Adult Cardiovascular Consultants PA	L05836	San Antonio	02	09/26/06
San Antonio	Cancer Therapy and Research Center	L01922	San Antonio	86	09/25/06
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	56	09/24/06
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	105	09/26/06
San Antonio	O'Neill and Associates PA	L03710	San Antonio	14	09/25/06
San Antonio	North Texas Cardiology	L05395	Sherman	11	09/15/06
San Marcos	Texas State University	L03321	San Marcos	23	09/26/06
Silsbee	Meadwestvaco Texas LLP	L01095	Silsbee	53	09/18/06
Snyder	DM Cogdell Memorial Hospital	L02409	Snyder	28	09/22/06
Sugar Land	Texas Oncology PA DBA Texas Oncology Cancer Center Sugarland	L05816	Sugar Land	06	09/15/06
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	06	09/14/06
Sugar Land	Fort Bend Heart Center	L05678	Sugar Land	06	09/26/06
Texarkana	Christus Health Ark-La-Tex DBA Christus Saint Michael Health System	L04805	Texarkana	15	09/26/06
Texas City	Valero Refining Company	L02578	Texas City	31	09/22/06
Texas City	CHCA Mainland LP DBA Mainland Medical Center	L02577	Texas City	30	09/18/06
Three Rivers	Diamond Shamrock Refining Company LP	L03699	Three Rivers	17	09/26/06
Throughout Tx	TEAM Industrial Services Inc	L00087	Alvin	151	09/20/06
Throughout Tx	TEAM Industrial Services Inc	L00087	Alvin	152	09/21/06
Throughout Tx	Texas Department of Transportation	L00197	Austin	121	09/21/06
Throughout Tx	Bullock Bennett & Associates LLC	L06012	Bertram	01	09/24/06
Throughout Tx	City of Brownwood Engineering Department	L05073	Brownwood	04	09/21/06
Throughout Tx	National Inspection Services LLC	L05930	Crowley	09	09/26/06

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Reed Engineering Group Inc	L04343	Dallas	13	09/26/06
Throughout Tx	Cardinal Health	L01999	El Paso	105	09/25/06
Throughout Tx	Gray Wireline Service Inc	L03541	Fort Worth	20	09/18/06
Throughout Tx	Woodard Construction Co Inc	L04991	Gatesville	03	09/21/06
Throughout Tx	Testmasters Inc	L03651	Houston	24	09/18/06
Throughout Tx	HVJ Associates Inc	L03813	Houston	31	09/15/06
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	213	09/20/06
Throughout Tx	Component Sales and Service Inc.,	L02243	Houston	26	09/22/06
Throughout Tx	Halliburton Energy Services Inc	L03284	Houston	32	09/22/06
Throughout Tx	Scientific Drilling International	L05105	Houston	08	09/22/06
Throughout Tx	Nuclear Scanning Services Inc	L04339	Houston	20	09/26/06
Throughout Tx	METCO	L03018	Houston	163	09/27/06
Throughout Tx	Oceaneering International Inc	L04463	Ingleside	47	09/20/06
Throughout Tx	Oceaneering International Inc	L04463	Ingleside	46	09/19/06
Throughout Tx	Perf-O-Log Inc	L05478	Iowa Colony	15	09/18/06
Throughout Tx	Headwaters Resources Inc	L05281	Jewett	03	09/21/06
Throughout Tx	Isotech Laboratories Inc	L04283	Midland	19	09/20/06
Throughout Tx	City of Midland Department of Development Services	L05684	Midland	03	09/21/06
Throughout Tx	Eagle X-Ray	L03246	Mont Belvieu	92	09/28/06
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	16	09/19/06
Throughout Tx	Turner Specialty Services LLC	L05417	Pasadena	25	09/14/06
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	09	09/26/06
Throughout Tx	Air Products Manufacturing Corporation	L04560	Pasadena	13	09/26/06
Throughout Tx	Geotechnical Testing and Consulting LLC	L05828	Plano	01	09/21/06
Throughout Tx	GCT Inspection Inc	L02378	South Houston	94	09/19/06
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	97	09/19/06
Throughout Tx	P & S Perforators Inc	L02396	Victoria	26	09/26/06
Throughout Tx	Wren Oilfield Services Incorporated	L04690	White Oak	07	09/21/06
Tomball	Northwest Heart Center	L05296	Tomball	03	09/27/06
Tyler	Cardinal Health	L02987	Tyler	48	09/21/06
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	62	09/25/06
Victoria	Citizens Medical Center	L00283	Victoria	76	09/22/06
Victoria	Victoria of Texas LP DBA Detar Hospital Navarro	L01630	Victoria	44	09/22/06
Waco	Baylor University Department of Risk Management	L00400	Waco	25	09/18/06
Waco	Baylor University Department of Risk Management	L00400	Waco	26	09/20/06
Webster	CHCA Clear Lake LP DBA Clear Lake Regional Medical Center	L01680	Webster	70	09/18/06
Wichita Falls	North Texas Cardiology Center LLP DBA North Texas Cardiology Center	L05443	Wichita Falls	06	09/20/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Texas Oncology PA South Austin Cancer Center	L05108	Austin	11	09/18/06
Houston	Willowbrook Cardiovascular Associates PA	L05093	Houston	13	09/26/06
Lubbock	Texas Tech University Environmental Health and Safety	L01536	Lubbock	77	09/18/06

RENEWAL OF LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Marshall	Harrison County Hospital Association DBA Marshall Regional Medical Center	L02572	Marshall	25	09/28/06
McAllen	McAllen Hospital LP DBA McAllen Medical Heart Hospital	L04902	McAllen	14	09/26/06
Midland	Texas Oncology PA DBA Allison Cancer Center	L04905	Midland	09	09/14/06
Throughout Tx	Phoenix Non Destructive Testing Co	L04454	Channelview	48	09/20/06
Throughout Tx	W W Webber LLC	L04904	Hillsboro	10	09/21/06
Waco	Baylor University	L01136	Waco	26	09/18/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200605547
Cathy Campbell
General Counsel
Department of State Health Services
Filed: October 10, 2006

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Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services (department) issued Agreed Orders to the following registrants:

Applied Standards Inspection, Inc. (License #L03072-000) of Beaumont. A total penalty of $5,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Pan American General Hospital (Registration #R00669-000) of El Paso. A total penalty of $14,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Anant N. Mauskar, M.D., P.A. (Registration #R22288-000) of Houston. Respondent shall surrender the certificate of x-ray registration for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

East Texas Medical Center Crockett (License #L01411) of Crockett. A total penalty of $3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200605546
Cathy Campbell
General Counsel
Department of State Health Services
Filed: October 10, 2006

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Reimbursement Rates

The Texas Health and Human Services Commission (HHSC) will hold a public hearing on Monday, November 6, 2006, at 2:00 p.m. to receive comment on proposed interim Medicaid reimbursement rates applicable to large, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), including state schools operated by the Texas Department of Aging and Disability Services (DADS). The public hearing will be held in the Lone Star Conference Room at HHSC's Braker Center office located in Austin, Texas at 11209 Metric Boulevard, Building H. The public hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. Persons with disabilities who wish to attend the public hearing and who require auxiliary aids or services should contact Irene Cantu by telephone at (512) 491-1358 by October 30, 2006, so that accommodations can be arranged.

Written and oral comments. Written comments about the proposed interim reimbursements rates may be submitted to HHSC until 5:00 p.m. on November 6, 2006, in lieu of or in addition to oral comments presented at the public hearing. Written comments may be hand-deliv-

ered or sent by U.S. mail, special delivery mail or overnight express to the attention of Irene Cantu, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas, 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu's attention at (512) 491-1998.

Briefing package. Briefing packages about the proposed interim reimbursement rates will be available at the hearing. Persons interested in receiving a briefing package before the hearing may contact Irene Cantu by telephone at (512) 491-1358, by facsimile at (512) 491-1998, by e-mail at Irene.cantu@hhsc.state.tx.us, or by mailing a request to HHSC Rate Analysis, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following interim reimbursement rates for large state-operated ICF/MR facilities operated by DADS:

State-Operated ICF/MR Large Facilities - Medicaid clients

Proposed interim daily rate - $345.87

State-Operated ICF/MR Large Facilities - Dual eligible Medicaid/Medicare clients

Proposed interim daily rate - $338.59

HHSC is proposing these interim rates so that adequate funds will be available to serve clients in these facilities. The proposed interim rates account for actual increases in costs to operate these facilities. The proposed interim rates will be effective September 1, 2006, if approved.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 TAC Chapter 355, Subchapter D, Rule §355.456(f), relating to Reimbursement Rates.

TRD-200605562
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 11, 2006

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Notice of Intent to Amend Consulting Contract

The Health and Human Services Commission (HHSC) currently contracts with MTG Management Consultants, L.L.C. (MTG) to provide project management and related services for the Medicaid Access Card (MAC) Project. This project seeks to (1) automate Medicaid processing to improve delivery of services to providers and recipients; (2) reduce the total amount of Medicaid expenditures by generating substantial, measurable, and sustainable cost saving for taxpayers; (3) reduce the number of fraudulent participants in the Medicaid Program and reduce the number of Medicaid fraud cases arising from authentication fraud and abuse; and (4) comply with the requirements of Section 531.1063, Texas Government Code, relating to the implementation of this Project.

Under the terms of the contract, MTG has acted as HHSC's Project Management Vendor for this Project.

The term of the original contract between HHSC and MTG, as amended, commenced on November 3, 2003, and extends through November 30, 2006.

As required by the provisions of Texas Government Code, Chapter 2254, prior to amending its contract with MTG, HHSC extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice. Unless a better offer (as determined by HHSC) is received from another vendor in response to this notice, HHSC intends to enter into negotiations with MTG to amend its consulting services contract, and to extend the term through November 30, 2007.

Scope of Work/Offer Specifications:

MTG acts as HHSC's Project Management Vendor for the MAC Project, which utilizes biometric identification technology to verify Medicaid recipients' identities.

As the Project Management Vendor for the MAC Project, MTG provides continuous project management and oversight of the MAC Project, including operational, quality assistance (QA), and general support. MTG provides oversight of MAC Project Vendor's performance and progress towards project milestones and it coordinates, collects, and transmits Pilot Vendor data.

The contract amendment reflects a proposed 12-month extension of the mandatory pilot in Travis, Hidalgo and Cameron, and additional counties, and will include the following scope of work:

• Support the project management and planning for MAC Project extension

• Support the project management of the design, testing, and implementation of new features

• Support the project management of the extended operations

• Support MAC Turnover project management

• Provide a project plan detailing the 12-month pilot extension activities

• Support planning activities related to the possibility of a statewide rollout of the Medicaid Access Card program.

In providing the Services and Deliverables, the contractor must ensure compliance with state and federal laws, rules and regulations governing the applicable programs.

Specifications:

Any consultant submitting an offer in response to this notice must provide the following:

(1) Consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address;

(2) Background information regarding the consultant, including the number of years in business and the number of employees;

(3) Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) The hourly rate to be charged for each team member providing services;

(5) The earliest date by which the consultant could begin providing the services;

(6) A list of five client references, including any State Medicaid Programs for which consultant has provided consulting services;

(7) A statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this notice), any unique benefits consultant offers HHSC, and any other information consultant desires HHSC to consider in connection with consultant's offer;

(8) Information to assist HHSC in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this notice;

(9) Information to assist HHSC in assessing the consultant's knowledge and/or capabilities of developing planning documents, conducting pro-

gram evaluation and technical analyses, working with Texas Medicaid programs, smart card and biometric technologies associated with deterring fraud, and specific issues related to the MAC Project;

(10) The following required forms, which are located on its website at http://www.hhsc.state.tx.us/about_hhsc/Contracting/rfp_attch/attach.html

(a) Child Support Certification;

(b) Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts;

(c) Federal Lobbying Certification;

(d) Nondisclosure Statement;

(e) Proposer Information; and

(f) HUB Subcontracting Plan Forms (Pre-Award). To search for potential HUB vendors who may perform subcontracting opportunities, respondents may refer to the Texas Building and Procurement Commission's Centralized Master Bidders List HUB Directory, which is found at http://www.tbpc.state.tx.us/cmbl/cmblhub.html. Class and item codes for potential subcontracting opportunities under this notice, include, but are not limited to: Class 918--"Consulting Services;" Item 06--"Administrative Consulting," Items 28-29--"Computer Hardware and Software Consulting," and Item 58--"Governmental Consulting." Failure to submit the required forms will result in HHSC's disqualification of the offer.

(11) Information to assist HHSC in assessing whether the consultant will have any conflicts of interest in performing the requested services.

Parties interested in reviewing the Scope of Work or submitting a competing offer should contact HHSC's sole point of contact regarding this notice, Ms. Vickie Ovington, Health and Human Services Commission, 909 West 45th Street, Austin, Texas 78751, Vickie.ovington@hhsc.state.tx.us.

Finding of Fact:

HHSC has submitted a request to the Governor's Office of Budget, Planning, and Policy for a finding of fact that the requested consulting services are necessary. Execution of a contract or an amendment to the current contract is contingent upon receipt of such a finding.

Criteria for Selection:

HHSC intends to negotiate an amendment to its contract with MTG unless it receives a better offer for the desired services. HHSC will make its selection based on demonstrated competence, knowledge, and qualifications, considering the reasonableness of the proposed fees for services.

How To Respond; Submittal Deadline:

All offers must be received no later than 5:00 p.m., Central Time, on November 14, 2006. Submissions received after the deadline will not be considered. Offers must be submitted to HHSC's sole point of contact listed above.

Questions:

Questions concerning this invitation and all offers in response to this notice should be submitted in writing or by email and directed to HHSC's sole point of contact listed above.

HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for any costs incurred by any entity in responding to this notice.

TRD-200605552

Martin Zelinsky
Assistant General Counsel
Texas Health and Human Services Commission
Filed: October 10, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Lancaster Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Sundown Elementary, 20100 Saums Road, Katy, Harris County, Texas 77449, at 6:00 p.m. on November 8, 2006, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Lancaster Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development to be located at approximately the 20000 block of Park Row Drive and the 1700 block of Snake River Road, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200605451
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 5, 2006

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Texas Department of Insurance

Request for Comments

Financial Responsibility Program User Guide

Senate Bill 1670, 79th Legislature, Regular Session, requires the Texas Department of Insurance, in consultation with the Texas Department of

Public Safety, Texas Department of Transportation and Texas Department of Information Resources (the implementing agencies), to implement Subchapter N, Chapter 601, Transportation Code, and create a program for verification of financial responsibility that will reduce the number of uninsured motorist in this state. Further, SB 1670 requires the agencies responsible for implementing Subchapter N, Chapter 601, Transportation Code, to establish and publish a user guide clearly specifying requirements and procedures for providing information under the verification program under that subchapter. The user guide is being developed. Commencing October 16, 2006, a draft version of the user guide will be available on the Texas Department of Insurance website at www.tdi.state.tx.us.

The Department of Insurance is soliciting comments on the draft user guide until 5:00 p.m. on October 30, 2006. Comments should be address to Melissa Mallett, Financial Responsibility Verification Program Coordinator, Property and Casualty Program, Mail Code 105-5C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-200605563
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 11, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of SUN CITY BEHAVIORAL HEALTH CARE, a domestic third party administrator. The home office is EL PASO, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200605559
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 11, 2006

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Texas Lottery Commission

Instant Game Number 761 "$300,000 Casino Action"

1.0 Name and Style of Game.

A. The name of Instant Game No. 761 is "$300,000 CASINO ACTION". The play style for the game BLACK JACK is "beat score". The play style for the game SLOTS is "match 3" with legend. The play style for the game ROULETTE is "key number match". The play style for game 7-11 is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 761 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 761.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, CHERRY SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, HORSE SHOE SYMBOL, GOLD BAR SYMBOL, 7 SYMBOL, CROWN SYMBOL, ONE DICE SYMBOL, TWO DICE SYMBOL, THREE DICE SYMBOL, FOUR DICE SYMBOL, FIVE DICE SYMBOL, SIX DICE SYMBOL, $1.00, $2.00, $3.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $50.00, $90.00, $100, $200, $250, $500, $1,000, $2,000, $3,000, $5,000, $15,000, $30,000, and $300,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 761 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
CHERRY SYMBOL	CHR
MELON SYMBOL	MEL
BANANA SYMBOL	BNA
STAR SYMBOL	STAR
LEMON SYMBOL	LEM
HORSE SHOE SYMBOL	HSH
GOLD BAR SYMBOL	BAR
SEVEN SYMBOL	SVN
CROWN SYMBOL	CRN
ONE DICE SYMBOL	ONE
TWO DICE SYMBOL	TWO
THREE DICE SYMBOL	THR
FOUR DICE SYMBOL	FOR
FIVE DICE SYMBOL	FIV
SIX DICE SYMBOL	SIX
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN

$20.00	TWENTY
$25.00	TWY FIV
$30.00	THIRTY
$50.00	FIFTY
$90.00	NINTY
$100	ONE HUND
$200	TWO HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$2,000	TWO THOU
$3,000	THR THOU
$5,000	FIV THOU
$15,000	15 THOU
$30,000	30 THOU
$300,000	300 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 761 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, $30,000, or $300,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (761), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 761-0000001-001.

L. Pack - A pack of "$300,000 CASINO ACTION" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$300,000 CASINO ACTION" Instant Game No. 761 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$300,000 CASINO ACTION" Instant Game is determined once the latex on the ticket is scratched off to expose 63 (sixty-three) Play Symbols. For the game BLACK JACK, if a player's YOUR HAND play symbol beats the DEALER'S HAND play symbol within the same game, the player wins prize shown for that game. For the game SLOTS, if a player reveals (3) three matching play symbols

in the same spin across, the player wins prize shown in legend for that game. For the game ROULETTE, if a player matches YOUR NUMBER play symbol to any NUMBER play symbol in the same wheel, the player wins prize for that number. For the game 7-11, if any roll adds up to 7 or 11, the player wins prize for that roll. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 63 (sixty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 63 (sixty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 63 (sixty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 63 (sixty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. GAME BLACK JACK: No ties between YOUR HAND and the DEALER'S HAND.

C. GAME BLACK JACK: No duplicate non-winning YOUR HAND play symbols.

D. GAME BLACK JACK: No duplicate non-winning prize symbols.

E. GAME BLACK JACK: No identical games on a ticket; i.e. 17 and 18 in GAME 1 (Blackjack) and 17 and 18 in GAME 2, 3 or 4.

F. GAME SLOTS: No duplicate non-winning SPINS in any order.

G. GAME SLOTS: No 3 matching non-winning prize symbols in a vertical or diagonal line.

H. GAME SLOTS: There will be many near wins (2 matching symbols).

I. GAME SLOTS: Non-winning SLOTS tickets will contain no more than 4 of the same play symbol.

J. GAME ROULETTE: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and $10).

K. GAME ROULETTE: No duplicate non-winning prize symbols between the 3 roulette wheels.

L. GAME ROULETTE: No duplicate non-winning WHEEL NUMBER play symbols within a roulette wheel.

M. GAME ROULETTE: No duplicate YOUR NUMBER play symbols.

N. GAME ROULETTE: Non-winning prize symbols will never be the same as winning prize symbols.

O. GAME 7-11: No duplicate non-winning prize symbols.

P. GAME 7-11: No duplicate non-winning rolls in any order.

2.3 Procedure for Claiming Prizes.

A. To claim a "$300,000 CASINO ACTION" Instant Game prize of $10.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of

proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$300,000 CASINO ACTION" Instant Game prize of $1,000, $30,000, or $300,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$300,000 CASINO ACTION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$300,000 CASINO ACTION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$300,000 CASINO ACTION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 761. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 761 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	1,000,000	3.00
$20	160,000	18.75
$30	50,000	60.00
$50	50,000	60.00
$100	16,500	181.82
$500	2,125	1,411.76
$1,000	66	45,454.55
$30,000	4	750,000.00
$300,000	3	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 2.35. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 761 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 761, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200605535
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: October 10, 2006

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Instant Game Number 764 "Aces High"

1.0 Name and Style of Game.

A. The name of Instant Game No. 764 is "ACES HIGH". The play style is "beat score".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 764 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 764.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $200 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 764 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 764 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $200.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (764), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 764-0000001-001.

L. Pack - A pack of "ACES HIGH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with back exposed. Ticket 001 will be folded over so the front of 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ACES HIGH" Instant Game No. 764 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "ACES HIGH" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If any of a player's YOUR CARDS play symbols beats the DEALER'S CARD play symbol, the player wins the prize shown. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR CARDS play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "ACES HIGH" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ACES HIGH" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ACES HIGH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "ACES HIGH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "ACES HIGH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 764. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 764 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,008,000	11.90
$2	1,200,000	10.00
$3	96,000	125.00
$4	72,000	166.67
$5	60,000	200.00
$6	36,000	333.33
$10	48,000	250.00
$20	36,000	333.33
$30	11,650	1,030.04
$60	8,000	1,500.00
$100	1,500	8,000.00
$200	1,350	8,888.89
$1,000	250	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 764 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 764, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200605555
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: October 11, 2006

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North Central Texas Council of Governments

Request for Grant Applications

This request by the North Central Texas Council of Governments (NCTCOG) is for grant applications.

The North Central Texas Council of Governments (NCTCOG) has received $8,892,609 from the Department of Health and Human Services Commission; and $8,447,971 is available for expenditures for Hurricane Katrina recovery. Though appropriations is a federal Social Services Block Grant, NCTCOG is one of several Councils of Governments throughout the state chosen to administer the funds to social service agencies that provided relief from the devastating storm last year.

ELIGIBILITY

Eligible applicants include cities, counties, health care providers (including community health centers, rural hospitals and clinics, and public hospitals), mental health providers (including community mental health centers), non-profit organizations, faith-based organizations, community-based organizations, educational organizations and any other social service providers located in the 16-county region. These are: Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise that have or are still serving individuals affected by Hurricane Katrina.

Eligible services may include mass meals, home-based services, housing services, health-related and home health services, legal services, transportation, or special services for at-risk youth or the developmentally or physically disabled.

DUE DATE

Applications are due to North Central Texas Council of Governments by 5:00 p.m. on Monday, November 6, 2006. Applications can be reviewed and completed at http://www.nctcog.org/ep.

GRANT APPLICATION PROCESS

Applications for funding will be made to NCTCOG then distributed to members of the Social Service Block Grant Review Committee. This group will review applications, assess needs, and make funding recommendations, which will then be brought before the NCTCOG Executive Board for approval and contracted through NCTCOG.

TRD-200605553

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: October 11, 2006

♦ ♦ ♦

Panhandle Regional Planning Commission

Request for Proposals

The Panhandle Regional Planning Commission (PRPC) is seeking proposals for leased space to house the Panhandle WorkSource Child Care Services, which provides supportive child care services for the area Workforce Development Programs and assists low-income parents with their child care needs. The property must be located in downtown Amarillo, Texas, and offer approximately 10,000 sq. ft. of contiguous space that can be appropriately configured for business/professional use. A copy of the Request for Proposals can be obtained by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 3:00 p.m. on November 3, 2006.

TRD-200605543
Leslie Hardin
Facilities Coordinator
Panhandle Regional Planning Commission
Filed: October 10, 2006

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Availability and Opportunity for Comment

The Texas Parks and Wildlife Department announces the availability of the Texas State Comprehensive Management Plan for Aquatic Nuisance Species (the Plan) for public comment. The Plan is focused on the control and management of nuisance aquatic species introduced into Texas' water either unintentionally, without approval, and/or illegally. The geographic scope of the plan is the state of Texas and the boundary waters under its jurisdiction, including parts of the Red River, the Sabine River, and the Rio Grande.

Aquatic nuisance species are a very serious problem in Texas, with increasingly negative impacts. The Plan is an important step in providing guidance on management actions to address the prevention, control and impacts of aquatic nuisance species that have invaded or may invade the state. The development of a state plan is called for in Section 1204 (A) of the Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101-646) (NANPCA). NANPCA was re-authorized and amended by the National Invasive Species Act of 1996 (NISA) (P.L. 104-332). These laws provide an opportunity for federal cost-share support for implementation of the plan. Approval of the management plan by the national Aquatic Nuisance Species Task Force is also required for a state to be eligible for federal cost-share support costs.

The Plan may be obtained by contacting Dr. Earl Chilton, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, Texas 78744, earl.chilton@tpwd.state.tx.us, or by visiting the department's website at www.tpwd.state.tx.us/huntwild/wild/species/exotic/manage_plan/.

The department will accept public comments on the proposed plan until 5 p.m. on Monday, November 20, 2006. Comments on the Plan may be submitted to Dr. Chilton.

TRD-200605521
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: October 9, 2006

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 2, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Cable San Antonio LP, doing business as Time Warner Cable, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33289 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33289.

TRD-200605456
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 4, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Cable One, Inc. for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33301 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33301.

TRD-200605536
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 2, 2006, Talk America Communications, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60118. Applicant intends to reflect a change in ownership/control.

The Application: Application of Talk America Communications, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33285.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 25, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33285.

TRD-200605455
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2006

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on October 4, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 36.001, and 37.154 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for approval of Transfer of a Facility in Hidalgo County, Docket Number 33308.

The Application: This transaction involves the transfer from AEP Texas Central Company to LCRA Transmission Services Corporation (collectively, Applicants) of a transmission facility and associated certificate of convenience and necessity (CCN) rights. The transmission facility proposed for transfer is the rebuilt North Weslaco to North Mercedes transmission line segment located in Hidalgo County. AEP Texas Central is retiring approximately 4.9 miles of existing 69-kV transmission line from North Weslaco to North Mercedes that is constructed on wood poles in a single pole configuration. The new line is being rebuilt with primarily single pole, steel structures upgraded to 795 ACSR conductor and operated at 138-kV. The Applicants stated that the rebuilt line will increase transmission power capacity necessary to continue reliable transmission service in the area.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 33308.

TRD-200605457
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 5, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 29, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of A-Tech Telecom, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 33279 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services. Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 25, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33279.

TRD-200605447
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 4, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 4, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of iBroadband Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 33300 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 25, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33300.

TRD-200605519
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 6, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 5, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of NSN Wireless, L.P. for a Service Provider Certificate of Operating Authority, Docket Number 33311 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, T-1 Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes all incumbent local exchange companies within the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 26, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33311.

TRD-200605538
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2006

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Notice of Petition for Waiver of Denial of Request for Additional Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on October 3, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Cricket Communications' request for additional numbering resources in the Houston, Texas rate center.

Docket Title and Number: Number Utilization Waiver Request - Houston Rate Center. Docket Number 33295.

The Application: Cricket Communications requested additional numbering resources in the Houston, Texas rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 24, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33295.

TRD-200605518
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 6, 2006

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Notice of Petition for Waiver of Denial of Request for Additional Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on October 5, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Verizon Southwest's request for an additional five 1,000-number DID blocks to meet the requirements of its customer.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources. Docket Number 33313.

The Application: Verizon Southwest requested additional blocks that will share the same NXX code to meet the business needs of their customer, EMC Mortgage, a wholly-owned subsidiary of The Bear Stearns Companies, Inc. who has requested additional numbering resources in the Houston, Texas rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 26, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33313.

TRD-200605539
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2006

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Revised Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on August 31, 2006, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition for Expanded Local Calling Service from the Rocky Creek Exchange to the Exchanges of Flatonia and Moulton, Project Number 33147.

The petitioners in the Rocky Creek exchange request ELCS to the exchanges of Flatonia and Moulton.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 6, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 33147.

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2006

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Office of Rural Community Affairs

Request for Proposals for Rural Health Facility Capital Improvement Loan Fund

Rural Health Facility Capital Improvement Loan Fund. The Office of Rural Community Affairs is issuing a Request for Proposals ("RFP") for the Rural Health Facility Capital Improvement Loan Fund. The purpose of this RFP is to provide the applicant with grant funding for

capital improvement projects under the endowment fund created by HB 1676.

USE OF FUNDS: Funds are awarded for a specifically defined purpose and may not be used for any other project. Funds may be used to make capital improvements to existing facilities, construct new health facilities and to purchase capital equipment, including information systems hardware and software.

AMOUNT OF AWARD: Funds are available for projects of up to $50,000. Funding will total approximately $2,100,000, depending on the amount received from the Comptroller's Office. A 10% match requirement is in effect by the applicant.

ELIGIBLE APPLICANTS: Eligible applicants include rural public and non-profit hospitals located in counties of less than 150,000 persons. Hospitals awarded funds during FY 2006 will not be eligible to apply.

EVALUATION AND SELECTION: Applications are initially screened for eligibility and completeness. Applications that do not meet the requirements in the RFP will not be considered for review. After the initial screening, the applications will be scored by a scoring committee. The Executive Director will make a final determination.

DEADLINE: Completed applications are due by 02/28/2007. Announcement of the selected applicants will be made by 03/16/2007.

CONTRACT PERIOD: The first budget period for the applications funded under this RFP will begin 04/01/2007 and continue for six months.

CONTACT PERSON: To obtain the application, please contact: Capital Improvement Fund Administrator Office of Rural Community Affairs P.O. Box 12877 Austin, Texas 78711 (512) 936-6701 or (800) 544-2042, email: orca@orca.state.tx.us www.orca.state.tx.us

TRD-200605461
Charles "Charlie" S. Stone
Executive Director
Office of Rural Community Affairs
Filed: October 6, 2006

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Texas Department of Transportation

Request for Proposal - Professional Services - Certified Public Accountant

In the August 18, 2006 issue of the *Texas Register* (31 TexReg 6550), the Texas Department of Transportation, Vehicle Titles and Registration Division, published a Request for Proposal - Professional Services - Certified Public Accountant. The following notice is published with new deadlines. The Request for Proposal (RFP) referred to in the August 18, 2006 *Texas Register* indicated the deadline for questions was October 13, 2006. That date has passed. Provider questions previously submitted in response to the RFP do not have to be sent in again. Responses to all questions will be answered on November 10, 2006.

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for professional services pursuant to Government Code, Chapter 2254, Subchapter A. The contract will be an indefinite deliverable/work authorization based contract and the contract term will be two years from the date of execution. The Vehicle Titles and Registration Division (division) of the department will administer the contract. The RFP will be released on October 20, 2006.

Purpose: The department is issuing this RFP to solicit proposals from qualified certified public accountants or accounting firms to provide outside audit services required by the department related to financial audits of departmental programs that are managed by outside entities. The selected firm shall conduct financial audits of all programs conducted under contract by outside entities. Upon completion of each audit, the selected firm shall produce a final audit report that includes an audit summary, comments, observations, findings, and recommendations on accounting controls, operational controls, policies and procedures, planning, budgeting and cash management considerations, and other aspects where improvements might result in savings, efficiencies, or strengthened controls. The selected firm shall include statements in each report of the firm's compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles promulgated by the American Institute of Certified Public Accountants (AICPA), the AICPA Audits of State and Local Governmental Units Audit and Accounting Guide, and the Government Accounting Standards, published by the U.S. General Accounting Office.

Eligible Applicants: Eligible applicants include, but are not limited to, certified public accountants or accounting firms that provide audit services.

Program Goal: The completion of a final audit report that includes an audit summary, comments, observations, findings, and recommendations on accounting controls, operational controls, policies and procedures, planning, budgeting and cash management considerations, and other aspects where improvements might result in savings, efficiencies, or strengthened controls for each contracting program that is audited.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the respondent's competence, knowledge, and qualifications, and as to the reasonableness of the proposed fees for the services. The criteria and review process are further described in the RFP.

Deadlines: Proposals must be received by 5:00 p. m., **November 17, 2006** and be prepared according to instructions in the RFP package.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Portia R. Hausmann, Texas Department of Transportation, Vehicle Title and Registration Division, 4000 Jackson Avenue, Austin, Texas 78731, Telephone (512) 467-3973, Fax (512) 302-2040. Copies will also be available on the department's web page at **www.txdot.gov**, by entering keyword: "VTR-RFP" into the search engine.

TRD-200605554
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: October 11, 2006

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Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University is seeking consulting services to provide inspection and budget forecasting for all educational and support facility roofs for a period of five years, beginning November 1, 2006 and ending October 31, 2011. Proposed inspection and documentation will provide the following: 1. physical inspection of all campus facility roofs 2. documentation of observed conditions with emphasis on known roof problems, reported leak conditions and preventative maintenance 3. summary of conditions requiring manufacturer warranty notification 4. summary of conditions requiring roof

related repair 5. summary of roofs projected for replacement for the duration of the agreement 6. final reports to be presented in CPU Windows XP environment, including building history of roof type, age, construction, flashing type, square footage, insulation, material manufacturer, etc., current conditions, budget forecast of repairs and replacements, roof plans, excel spread sheet, photographs and warranties. Additional roof inspections shall be provided during repair or construction as required by the University, with the price to be negotiated depending on specific requirements for each job.

ELIGIBLE APPLICANTS: All governmental, public, nonprofit private, or for-profit private entities that can demonstrate the expertise necessary to carry out the required consultant services are encouraged to submit proposals.

PROPOSAL FORMAT: Interested parties must submit proposal with the following information: experience, qualifications, cost for inspection services to be provided the first year; subsequent years to be negotiated annually, the name, address, and phone number of the individual assigned to the account, and the vendor identification number/tax identification number of the applicant.

SELECTION CRITERIA: Evaluation will be made by the Director of Purchasing and the Director of Physical Plant based upon evidence of the applicant's knowledge and experience in performing the specified services and costs.

DEADLINES: Proposal must be received in the office of Diana Boubel, Director of Purchasing, P.O. Box 13030, 2124 Wilson Drive, Nacogdoches, Texas 75962 by October 19, 2006, 5:00 p.m. Contract shall be for an estimated amount not to exceed $95,000. Please contact Diana Boubel at (936) 468-2206 or Lee Brittain at (936) 468-1400 for more information.

TRD-200605446
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: October 4, 2006

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The University of Texas System

Notice of Intent to Seek Consultant Services

Notice of Addendum 1 to IFO 744-6035-COMMUNICATIONS AUDIT

The University of Texas Health Science Center at Houston

In accordance with the provisions of Texas Government Code, Chapter 2254, The University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to provide a communications audit.

The President of The University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Addendum 1 has been issued to IFO 744-6035-COMMUNICATIONS AUDIT filed with the Secretary of State on September 18, 2006 (Texas Register Docket No. 200605172). The notice was published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8301).

Parties interested in a copy of the Invitation for Offers and Addenda should contact:

Samantha Lai, C.T.P.

Purchasing Contracts Administrator

Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, TX 77054

Voice: 713-500-4723 Email: samantha.b.lai@uth.tmc.edu

The proposal submission deadline will be Friday, October 27, 2006 at 3:00 P.M. Central Prevailing Time.

ADDENDUM 1

DATE: October 3, 2006

PROJECT: Institutional Communications Audit

IFO NO: 744-6035-COMMUNICATIONS AUDIT

OWNER: University of Texas Health Science Center Houston, Texas

TO: Prospective Proposers

This Addendum forms part of Contract Documents and modifies Proposal Documents dated September 15, 2006 with amendments and additions noted below.

1. Proposal Submittal Deadline: Proposal submittal deadline indicated on the filing with Texas Register was made in error. The Proposal submittal deadline is Friday, October 27, 2006 at 3:00 PM CST.

The following questions were asked by prospective bidders and responses are provided to clarify the specifications for this IFO.

1. Question - We are planning to respond to this IFO, but have a question whose answer may dictate the methodology (and thus the budget) for performing this work. Would UTHSC be able to provide e-mail addresses of the students and employees referenced? Alternatively, does UTHSC have a mechanism for sending e-mail blasts to those audiences?

Answer - The awarded consultant can obtain a "guest account" with sponsorship from an Administrative and Professional level employee. The guest account will give them a UT e-mail account and access to send out e-mail blast messages.

2. Question - The 4-6 week deadline for completion of this audit, assuming a quality process and quality outcomes, is unrealistic for any firm that (1) has other clients, and (2) does not reside in Houston. If this is beyond compromise, we will not bid. Three to four months is much more realistic.

Answer - The 4-6 weeks deadline is what is requested for the completion of the communications audit or sooner.

TRD-200605453
Francie A. Frederick
General Counsel to the Board
The University of Texas System
Filed: October 5, 2006

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Notice of Intent to Seek Consultant Services

Notice of Addendum 2 to IFO 744-6035-COMMUNICATIONS AUDIT

The University of Texas Health Science Center at Houston

In accordance with the provisions of Texas Government Code, Chapter 2254, The University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to provide a communications audit.

The President of The University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Addendum 2 has been issued to IFO 744-6035-COMMUNICATIONS AUDIT filed with the Secretary of State on September 18, 2006 (Texas Register Docket No. 200605172). The notice was published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8301). Addendum 1 was filed with the Secretary of State on October 5, 2006 (Texas Register Docket No. 200605453) and is published elsewhere in this issue.

Parties interested in a copy of the Invitation for Offers and Addenda should contact:

Samantha Lai, C.T.P.

Purchasing Contracts Administrator

Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, TX 77054

Voice: 713-500-4723 Email: samantha.b.lai@uth.tmc.edu

The proposal submission deadline will be Friday, October 27, 2006 at 3:00 P.M. Central Prevailing Time.

ADDENDUM 2

DATE: October 6, 2006

PROJECT: Institutional Communications Audit

IFO NO: 744-6035-COMMUNICATIONS AUDIT

OWNER: The University of Texas Health Science Center at Houston, Houston, Texas

TO: Prospective Proposers

This Addendum forms part of Contract Documents and modifies Proposal Documents dated September 15, 2006 with amendments and additions noted below.

1. Change to Section 5.4 - Scope of Work - The timeline for complete communications audit has been revised from four (4) to six (6) weeks to eight (8) to ten (10) weeks.

The following questions were asked by prospective bidders and responses are provided to clarify the specifications for this IFO.

1. QUESTION - Would having access preclude us from getting an e-mail database?

ANSWER - No, obtaining a guest account would not preclude you from getting an e-mail database. *Please note that obtaining e-mail address shall be for the sole purpose of this communications audit. The consultant shall not distribute, sell, or provide to any other person(s) for any other purpose.*

2. QUESTION - Is it possible to obtain a waiver of this requirement (APR)?

ANSWER - The consultant must meet the minimum requirement of being accredited in Public Relations (APR). Other experiences would not be considered in lieu of the minimum requirements (ref Section 5.2).

TRD-200605534
Francie A. Frederick
General Counsel to the Board
The University of Texas System
Filed: October 10, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).